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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

October Term, 1883.

No. 1049.

THE CITY OF JONESBORO', APPELLANT,

vs.

THE CAIRO AND SAINT LOUIS RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 8, 1883.

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1 *Placita.*

Pleas in the circuit court of the United States of America in and for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. Samuel H. Treat, district judge of said district, and in the absence of the Hon. Thomas Drummond, judge of the seventh judicial circuit of the United States, pro tempore sole judge of said circuit court, on Wednesday, the 11th day of April, at the January term of said court, in the year of our Lord one thousand eight hundred and eighty-three, and of Independence the one hundred and seventh year.

J. A. JONES, *Clerk.*

THE CITY OF JONESBORO'
vs.
THE CAIRO AND ST. LOUIS RAILROAD COMPANY, Charles P. Swigert, Auditor of the State of Illinois; William S. Hanners, County Clerk of Union County Illinois; Henry Rendleman, Sheriff of Union County Illinois; The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company, and Luther R. Graves. } 6500. In chancery.

2 SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 21st day of December, in the year of our Lord one thousand eight hundred and eighty-two, came the defendants in the above-entitled cause, by Messrs. Sanders and Williams, their solicitors, and filed in the office of the clerk of said United States circuit court a transcript of the record in said cause from the circuit court of Union County, Illinois, together with copies of all the papers filed in said Union County circuit court in said cause; which are in the words and figures following, to wit:

A.—*Bill.*

In the circuit court, to the September term, 1883.

STATE OF ILLINOIS,
Union County, ss:

To the honorable Daniel M. Browning, one of the judges of the first judicial circuit of the State of Illinois, and presiding at the Union County circuit court in chancery sitting:

3 The city of Jonesboro', an incorporation under the laws of the State of Illinois, respectfully represents unto your honor that it is now, and has been ever since some time in the year 1873, incorporated under the general laws of the State of Illinois, but prior thereto was incorporated and acting under the special charter granted to it by the legislature of the State of Illinois in the year 1857, and found in the private laws of that year, on pages 74 to 80, inclusive.

That while so acting under its special charter, to wit, in the year 1868, the said city under and by virtue of the power conferred upon it by the 14th section of said charter, which is in the words and figures as follows, to wit:

"§ 14. They shall have power to appoint a clerk and all other officers not made elective by this act which shall be necessary, an' the officers thereof created by ordinance of the board; they shall have power to require and approve bonds of all officers appointed in pursuance of this charter, with penalties and security for the faithful performance of their respective duties; to borrow money on the credit of the city and issue their bonds under the seal of the city therefor; but no money shall be borrowed on the credit of
the city except with the consent of two-thirds of the qualified voters
4 of the city; they shall have power to appropriate money, pay the
debts, and provide for the general welfare of the city; to establish hospitals and make regulations for the government of the same, and to secure the general health of the inhabitants, and to declare what shall be a nuisance, and to prevent and remove the same," attempted to subscribe the sum of $50,000 to the capital stock of the Cairo and St. Louis Railroad Company, and to issue its bonds in payment therefor, and for that purpose on the second day of March, 1868, adopted the following resolution:

"Whereas at a mass meeting of the citizens of the city of Jonesboro', at the court-house, on the 12th day of February, 1868, the city council were requested to submit to the legal voters of said city, at an early day, whether the city would subscribe $50,000 stock to the Cairo and St. Louis Railroad Company; therefore be it

"Resolved by the city council of the city of Jonesboro', That the question of the city of Jonesboro' subscribing $50,000 to the capital stock of the Cairo and St. Louis Railroad Company, and issuing bonds therefor, pay-
able within twenty years from date, at the option of the said city,
5 bearing interest at the rate of eight per cent. per annum from date
of issue, conditioned that said railroad passes through the corporate limits of said city, with a depot therein at some suitable and convenient place to the acceptance of the city council, that said railroad be completed from Cairo to St. Louis within a reasonable time, be submitted to the legal voters of said city at the next regular election to be held on the 6th day of April, 1868, and that the clerk give the legal notices; and be it further

"Resolved, That if a majority of all the legal votes cast at said election be for subscribing $50,000 stock, then, in that case, when said railroad shall be graded ready for laying the rails from either of the extreme ends through the city of Jonesboro', then one-half of said bonds shall be issued and the other half when the cars are running through from Cairo to St. Louis; said bonds, when issued, shall be of the denomination not exceeding $5,000 each, and shall be signed by the mayor and attested by the clerk under the seal of said city, and countersigned and registered by the city treasurer."

That after the adoption of the constitution of the State of Illi-
6 nois of 1870, to wit, on the 21st day of July, 1871, the said city,
after reciting the aforesaid resolution and an election held thereunder on the 6th day of April, 1868, passed the following ordinance, viz:

"SECTION 1st. Now, therefore, for the purpose of giving effect to the wishes of the voters of said city, be it enacted by the city of Jonesboro', that a subscription of fifty thousand dollars to the capital stock of the

Cairo and St. Louis Railroad Company be, and the same is hereby, made upon the conditions specified in said resolution.

"SECTION 2d. Be it further enacted, that for the purpose of paying such subscription there shall be issued bonds in the sum of one thousand dollars each, to the aggregate amount of fifty thousand dollars, numbered from one to fifty, inclusive, payable in twenty years from date, with interest at eight per cent. per annum, and the city clerk shall cause the said bonds to be prepared and shall deliver the same to John E. Naill, who is hereby appointed agent on behalf of the city to receive from the clerk the said bonds and to deliver the same to the said company, its authorized agent or officer,
upon compliance by said company with the conditions in said reso-
7 lutions specified and at the same to receive from said company its cer-
tificate or certificates of stock (paid up) in said company to an amount equal to the amount of the bonds so delivered and that he immediately deliver such certificate or certificates to the city council. Said bonds prior to their deliver' by the said John E. Naill to the said company shall be canceled, and the coupons, or so many as to amount to the amount of interest accumulated, shall be returned to the city council, or any fractional part canceled on the coupon or coupons."

On the first day of July, 1882, the said Cairo and St. Louis Railroad Company claimed that they would soon perform the conditions precedent to the delivery of the first issue of the bonds, to wit, the grading of their road-bed from one of the extreme ends through said city, ready for laying the rails, which fact is recited in the condition of said bonds in the following words, as your orator is informed:

"Said Cairo and St. Louis Railroad Company, having duly performed all the conditions of said subscription to be performed on its part before said bonds was to be issued;"

8 Whereupon the said city clerk prepared and placed in the hands of one John E. Naill twenty-five bonds purporting to be the bonds of the city of Jonesboro', issued under and by virtue of the charter and ordinances of the said city of Jonesboro' in payment for so much stock subscribed to the Cairo and St. Louis Railroad Company, and being for the sum of one thousand dollars each, payable twenty years after the date thereof, which was the date, as your orator is informed, last mentioned above, with eight per cent. interest per annum from date, payable to the Cairo and St. Louis Railroad or bearer, as your orator is informed. That sometime thereafter the said railroad company fraudulently and illegally obtained from the said John E. Naill or his successor the said twenty-five bonds, and left no registration or date from which your orator can specially set forth the precise language of said bonds, but your orator has been recently informed and states the fact to be that said bonds so illegally issued and fraudulently obtained by said railroad company are not only
not authorized by the charter, but are not even the bonds voted for
9 by the people in the following respects, nor authorized by ordinance:

First. They are not payable at the option of the city within twenty years.

Second. They are made payable to bearer.

Third. They fail to set forth the conditions prescribed by the ordinance, vote, and resolution above referred to.

Fourth. The bonds were to be conditioned, making them non-negotiable, and these contain no conditions.

That after said bonds were obtained as aforesaid they were by said railroad company, or some person for it, fraudulently registered with the auditor of the State of Illinois, who has annually during the pendency of controvers*y*s between said railroad company and your orator, as hereinafter set forth, certified a rate of tax to be levied and collected to pay the interest on said bonds, which said tax has been regularly paid by said city for the reasons hereinafter set forth.

Your orator further represents that when said bonds had passed into the hands of said railroad company no effort was made by it to complete or build any substantial railroad according to the terms of said subscription, and after the second day of July, 1870, the *guage*
10 of said road was changed from the standard to a three-foot or
what is termed a narrow *guage*, for the purpose of lessening the cost of said road and of building a cheaper road than that contemplated by the people of said city at the time of said vote; that said road was never completed; that what portion of it was built was of the poorest character; that the track was laid of the ligh'est and cheapest rail that could be procured in the market; that said road has never obtained a right of way into the city of Cairo; that it has been built in such a way that during a part of nearly every year a portion of the track is submerged in water, and so cheaply and inefficiently constructed that the trains do not and cannot run into and out of the city of Cairo during a large part of each year; that said railroad company never complied with its contract with the city of Cairo for right of way in said city; that when the river is low it finds its way into Cairo by creeping around on the outside of the levee and trespassing on the "made land" left by the fall of the river; that although more than fourteen years have elapsed since said subscription was voted, and although Jonesboro' is the county seat of Union
11 County and one of the principal towns of Southern Illinois, there
has been no station-house erected in said city of Jonesboro', and nothing but a miserable board "shanty," set on wooden posts, which could be erected at a cost of twenty-five dollars; that the stations of Springville and Mill Creek in said county are worse provided for, the station-house at Mill Creek being a board shanty about ten by twelve feet; that there is no station at all at Elco, and that a number of stations along said road are in a similar condition.

Your orator says further, that said road has never been extended to the city of Saint Louis; that its connection was stopped at East Carondelet, a point six or seven miles short of its proposed terminus; that said road was very poorly equipped and has remained so; that it seemed to be the object of said company to obtain bonds from every municipality along the line of its road and then impose upon them the least expensive and most miserable semblance of a railroad that could be constructed.

Your orator further represents that said railroad company watered its stock to a large amount, but just how much your orator does not
12 know, not less, however, than five hundred thousand dollars, with-
out consent of its stockholders, and without the knowledge of your orator, so that the stock delivered to the agent of said city was worthless; that it either squandered or embezzled the funds of said company and mortgaged said road for more than it was worth and misapplied the proceeds thereof; that it made false and fraudulent statements to the State

authorities about the cost of said road and by a species of swindling and fraudulent reporting precipitated said company into bankruptcy rendering it impossible for it to comply with the terms of said subscription; that said road has since been sold without any equity of redemption to pay the debts of said company and has passed to other hands, rendering the stock delivered to your orator worthless and vesting said road in other parties who are under no legal obligations to complete said contract of subscription.

Your orator further represents that before the final catastrophe of this company and after a reasonable time had elapsed from the taking of said vote, your orator declared said contract of subscription forfeited 13 and declined to complete it, and successfully resisted an attempt on the part of said company to coerce by law the second issue of bonds voted for, the judgment in such case being still in force res adjudicata on the question of the performance of the conditions of said subscription, both as to said company and as to all parties with notice claiming such performance by said company.

Your orator says further that said bonds issued were negotiated to parties unknown to your orator, who supposed that said bonds contained the conditions provided by said ordinance, and that their validity would be determined in the said suit, which terminated in 1879; but now it is that said bonds were, after the termination of said suit, found without the conditions so provided, and the holders thereof claiming their enforcement, and the said holders or their agents have made overtures of compromise of said bonds to your orators since said litigation, but their propositions have been rejected by both the people and the council, of your orator, says but for these circumstances the validity of said bonds would long since have been tested.

Your orator submits that said bonds are void for the following reasons:

14 First. There is no authority in the charter of said city to which they refer to subscribe stock to a railroad company, and issue bonds therefor.

Second. The city council had no power or authority to pass the ordinance of subscription referred to.

Third. The city officers had no right or authority to issue these bonds without the conditions prescribed by the vote of the people and said ordinance.

Fourth. The bonds were issued since the adoption of the constitution of 1870.

Fifth. The stock was subscribed for since the adoption of the constitution of 1870.

Sixth. The bonds were issued since the constitution of 1870, and do not come within the saving clause of the section of the constitution of 1870 in regard to municipal subscriptions, &c.

Seventh. There was no subscription or existing contract on part of the city at the time of the adoption of the constitution of 1870.

Eighth. The bond is not the one authorized by the ordinance of subscription.

Ninth. The sum subscribed is beyond the limit prescribed and allowed by the constitution, being over 40 % of the assessed value of the en-

15 tire property the city, exclusive of interest, and with the interest
it exceeds the value of the said property nearly ten thousand dollars and requires a tax levy of one & $\frac{76}{100}$ dollars on each one hundred dollars' worth of property in said city to pay the interest annually, the assessed value having at all times been insufficient to pay such illegal claim of interest.

Your orator further represents that the said railroad company has, since obtaining the said bonds, fraudulently procured their registration in the auditor's office of the State of Illinois, and fraudulently claim and insist that said bonds were, notwithstanding their recitals, issued under a private law of 1869, purporting in its enacting clause to be an act amending an act to incorporate the Cairo and St. Louis Railroad Company, and have had them so registered.

Now your orator submits that even if that law (being a private law and making no reference to our charter) can be construed as being applicable to said bonds, or authorizing their issue, then your orator and its people
and tax-payers are still being burdened with unjust and illegal taxes,
16 said law prohibiting a levy of more than one dollar on each hun-
dred dollars worth of property as assessed, and the levy now being one & $\frac{76}{100}$ dollars on each one hundred dollars being nearly double what the charter of said railroad company and the law referred to in the certificate of registration provides.

Your orator further represents that said bonds have passed into the hands of persons unknown to your orator, and whose names cannot be ascertained upon diligent inquiry, but whether for value your orator does not know, but maintains and insists that it can make no difference as the bonds on their face recite the facts and laws, rendering them void, and give every holder notice of every defence relied upon by said city as to the validity of said bonds, but whom your orators make defendants under the name of The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company.

Your orator further represents that the aforesaid sum or rate of one & $\frac{76}{100}$ dollars tax has been certified by Charles P. Swigert, auditor of the
State of Illinois, to William S. Hanners, county clerk of Union
17 County, and by him extended on the tax-books of said county, and
delivered to the sheriff of said county, who has collected said tax and paid a large portion of the same over to said Charles P. Swigert, auditor as aforesaid, and that said auditor will, on or about the first day of July, 1882, pay the same over to said bondholders as and for one year's interest on said bonds, unless enjoined from so doing by this honorable court.

That said taxes so certified, levied, and collected are illegal, excessive, and unjust, either under the charter of said city which limits the levy for all city purposes to fifty cents on the one hundred dollars worth of property or under any law known to your orator.

That said bonds have never been registered by the city authorities as required by law, or in any manner registered in said city.

That they were registered, as hereinbefore stated, on the 13th day of October, 1874, in the auditor's office.

Your orator further states that it now, upon presentation of this bill, brings into court the certificate of stock tendered to it by said railroad company to be disposed of as this honorable court shall direct.

That said certificate, as your orator is informed, has been in pos-
18 session of E. A. Willard, a banker of said city, and has never
passed into the possession of your orator or been received by it, and is now recognized only to the extent of asking its delivery into court to be disposed of as the court shall direct.

Your orator says that it and its people have never done any overt act recognizing the bonds so issued; that there was no data or registration of said bonds either in said city or the said auditor's office to inform them of the character of said bonds; that their contract of subscription was such that they had a right to suppose (if the bonds were issued in accordance with it) that the validity of said bonds would be determined in the aforesaid suit; that said suit was commenced after a reasonable time had elapsed; that negotiations of compromise were pending after the termination of said suit; that the payment of taxes was not an overt act, the city never having either levied, assessed, or paid said taxes, nor even received the certificate of stock tendered by said company; that such interest tax was levied by the auditor, extended by the county clerk, and collected by the
sheriff from a helpless people who had no record or knowledge of
19 the unauthorized acts of its agents, and the majority of them no
financial means to carry on a suit of this kind, and finally that there was such want of power to issue such bonds that it cannot matter how much interest has been collected.

Your orator says that said election was in every way illegal and void; that no sufficient notices were given by any proper authority; that two-thirds of the voters of said city did not consent to such subscription, nor did a majority of them vote for it (taking as a standard the number of votes thrown at the last general election for county officers), and that there was no law or power in the charter of said city authorizing said election.

Now, therefore, inasmuch as your orator is without a remedy in the premises except in a court of equity, and to the end that the said Cairo and St. Louis Railroad Company, Charles P. Swigert, State Auditor; William S. Hanners, County Clerk; Henry Rendleman, Sheriff, and The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company, who are made parties defendant to this bill, may
be required to make full and direct answer to the same, but not
20 under oath, however, the answer under oath being hereby ex-
pressly waived, and that your honor will grant unto your orator a writ of injunction against the said Charles P. Swigert, William S. Harmers, and Henry Rendleman and their successors in office, restraining the said Charles P. Swigert and his successors in office from paying over to the holders of the Jonesboro' City bonds the money now in his hands and levied for that purpose, and further from certifying to the county clerk of Union County, Illinois, any further rate of tax on account of the said city bonds issued in aid of the Cairo and St. Louis Railroad Company, and that the said William S. Hanners and his successors in office be restrained from extending any further tax on account of said bonds, and that the said Henry Rendleman and his successors be restrained from collecting such taxes and also from paying over whatever balance may be in his hands, possession, or control, on account of said bonds, until their legality shall be determined by law, and that if said bonds shall be held by the court to be illegal and void, that said injunction may be made perpetual, and the said

bonds canceled together with all coupons not heretofore paid
21 off. And that inasmuch as your is unable to produce any
one of said bonds as an exhibit, that when such bondholders, or some one of them, shall come into court, that your honor will grant a rule on some one of them to produce one of said bonds so that this cause may be more satisfactorily tried; and that your orator may have such other and further relief as equity may require and to your honor seem *mete* and proper:

May it please your honor to grant the writ of summons in chancery, directed to the proper officer to execute, commanding *them* to summon the said defendants hereinbefore named to appear before the said court on the first day of the next term thereof, to be held at the court-house in Jonesboro', in said county, on the first Monday in September, 1882, then and there to answer this bill.

And may it please your honor to grant unto your orator the people's writ of injunction, to be directed to the said Charles P. Swigert, William S. Hanners, and Henry Rendleman, restraining them, their successors,
agents, clerks, deputies, and employees, from levying, certifying, ex-
22 tending, collecting, or paying over any tax on account of the Jones-
boro' city bonds issued in aid of the Cairo and St. Louis Railroad Company until the further order of this court. And, finally, when said suit shall be determined, that your honor will grant an order on the said Charles P. Swigert and Henry Rendleman requiring them to pay over said money now in their possession and control to the parties entitled thereto, and especially back to the city, if said bonds should be declared.

THE CITY OF JONESBORO',
By DAY AND GREAR, *its Solicitors.*

STATE OF ILLINOIS,
Union County, ss:

W. S. Day, being first duly sworn, on his oath says that he is one of the attorneys of complainant, and has read the bill above written and knows the contents thereof; that the facts therein set forth are true in substance and in fact, as he verily believes, except as to that part in regard to invalidity of elections, and as to that he is unadvised.

W. S. DAY.

23 Subscribed and sworn to before me this 24th day of June, A. D. 1882.

E. M. BARNWELL, *Clerk.*

It appearing to the undersigned that the honorable D. M. Browning, judge of the circuit court, presiding in said county of Union, is absent from said county, and that no judge of the supreme, circuit, or superior court of the State was now within the county of Union, it is ordered that the clerk of the circuit court of the county of Union and State of Illinois issue a writ of injunction as prayed for in the within bill, returnable to the next term.

Dated June 24th, 1882.

THOMAS HILEMAN,
Master in Chancery of Union County, Illinois.

(Endorsed:) Filed June 24, 1882. E. M. Barnwell, clerk.
(Also endorsed:) Filed December 21, 1882. J. A. Jones, clerk.

B.—*Affidavit of non-residence.*

STATE OF ILLINOIS,
Union County, ss:

In the circuit court to the September , 1882.

24 THE CITY OF JONESBORO' *vs.* THE CAIRO AND ST. LOUIS RAILROAD COMPANY, Charles P. Swigert, Henry Rendleman, and The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company.	Bill to cancel bonds and for other relief and for injunction.

W. S. Day, being first duly sworn, on his oath says that he is one of the attorneys for the said complainant, and that the above-named defendants' The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company residence or residences and their post-office or post-offices are unknown to affiant and cannot upon diligent inquiry be ascertained. Affiant further states that he has been informed and believes the fact to be that they are non-residents of the State of Illinois. He also states that their names are also unknown and cannot upon diligent inquiry be ascertained.

W. S. DAY.

Subscribed and sworn to before me this 24th day of June, A. D. 1882.

E. M. BARNWELL, *Clerk.*

25 (Endorsed:) Filed the 24th June, A. D. 1882. E. M. Barnwell, clerk.

(Also endorsed:) Filed December 21, 1882. J. A. Jones, clerk.

C.—*Certificate of stock.*

No. 63.] STATE OF ILLINOIS. [250 shares.

CAIRO AND ST. LOUIS RAILROAD COMPANY.

This is to certify that the city of Jonesboro', in the State of Illinois, is entitled to two hundred and fifty shares, of one hundred dollars each, of the capital stock of the Cairo & St. Louis Railroad Company, transferable only on the books of said company by the said stockholder in person or by attorney, on the surrender of this certificate.

In witness whereof the said company has caused this certificate to be signed by its president and secretary this fourth day of September, 1874.

[SEAL.] S. STAATS TAYLOR,
President.

F. BROSS, *Secretary.*

For value received hereby sell, transfer, and assign to
26 the shares of stock above mentioned, and authorized
to make the necessary transfer on the books of the company.
Witness hand and seal this day of , 18 .

(Endorsed:) Filed June 24, 1882. E. M. Barnwell, clerk.
(Also endorsed:) Filed December 21, 1882. J. A. Jones, clerk.

D.—*Injunction writ.*

STATE OF ILLINOIS,
Union County, ss:

The People of the State of Illinois to Charles P. Swigert, William S. Hanners, and Henry Rendleman, and to their successors, agents, clerks, deputies, and employees, and to each and every of them, greeting:

Whereas it has been represented to the Hon. Daniel M. Browning, one of the judges of the first judicial circuit of the State of Illinois, on the part of The City of Jonesboro', complainant, in its certain bill of complaint exhibited before said judge, and filed in the circuit court of Union County aforesaid against you, the said Charles P. Swigert, William S. Hanners, and Henry Rendleman, with others, to be
27 relieved touching the matters therein complained of, in which said bill is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in said bill, and that your actings and doings in the premises are contrary to equity and good conscience; and Thomas Hileman, master in chancery of said county, having under his hand endorsed upon said bill an order that a writ of injunction issue out of the circuit court of said Union County according to the prayer of said bill: We, therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you, the said Charles P. Swigert, William S. Hanners, and Henry Rendleman, and the persons before mentioned, and each and every of you, that you do absolutely desist and refrain from levying, certifying, extending, collecting, or paying over any tax on account of the Jonesboro' city bonds issued in aid of the Cairo and St. Louis Railroad Company until this honorable court, in chancery sitting, shall make other order to the contrary.

Hereof fail not under penalty of what the law directs.

28 To the sheriff of Sangamon County to execute and return in due form of law.

Witness Edward M. Barnwell, clerk of said circuit court, and the seal thereof, at his office, in Jonesboro', in said Union County, this 24th day of June, A. D. 1882.

[SEAL.] E. M. BARNWELL, *Clerk.*

Sheriff's return.

Executed the within writ June 28th, 1882, by reading the same and delivering a true copy thereof to the within-named Charles P. Swigert, auditor of public accounts of the State of Illinois. The other defendants within named not found in my county.

H. GIBSON,
Sheriff of Sangamon County, Illinois.

(Endorsed:) Filed in circuit court this 29' day of June, A. D. 1882. E. M. Barnwell, clerk.

(Also endorsed:) Filed December 21, 1882. J. A. Jones, clerk.

E.—*Injunction writ.*

STATE OF ILLINOIS,
Union County, ss :

The people of the State of Illlinois to Charles P. Swigert, William S. Han-
ners, and Henry Rendleman, and to their successors, agents,
29 clerks, deputies, and employees, and to each and every of them,
greeting :

Whereas it has been represented to the Hon. Daniel M. Browning, one of the judges of the first judicial circuit of the State of Illinois, on the part of The City of Jonesboro', complainant, in its certain bill of complaint exhibited before said judge, and filed in the circuit court of Union County aforesaid, against you the said Charles P. Swigert, William S. Hammers, and Henry Rendleman, with others, to be relieved touching the matters therein complained of. In which said bill is stated, among other things, that you are combining and confederating with others to injure the complainant touching the matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience. And Thomas Hileman, master in chancery of said county, having under his hand endorsed upon said bill an order that a writ of injunction issue out of the circuit court of said Union County, according to the prayer of said bill, we, therefore, in consideration thereof, and of the particular matters in said bill set forth, do strictly command you the said Charles P.
Swigert, William S. Hanners, and Henry Rendleman, and the
30 persons before mentioned, and each and every of you, that you do
absolutely desist and refrain from levying, certifying, extending, collecting, or paying over any tax on account of the Jonesboro' City bonds, issued in aid of the Cairo and Saint Louis Railroad Company until this honorable court in chancery sitting shall make other order to the contrary. Hereof fail not under the penalty of what the law directs.

To the coroner of Union County to execute and return in due form of law.

Witness: Edward M. Barnwell, clerk of said circuit court, and the seal thereof, at his office in Jonesboro', in said Union County, this 24th day of June, A. D. 1882.

[SEAL.] E. M. BARNWELL, *Clerk.*

Sheriff's return.

STATE OF ILLINOIS,
Union County, ss :

I duly served the within by delivering a true copy thereof to Wm. S. Hanners and Henry Rendleman this the 30th day of June, A. D. 1882.

JOHN HARWOOD, *Coroner.*

(Endorsed :) Filed in circuit court this 21st day of July, A. D. 1882. E. M. Barnwell, clerk.

(Also endorsed :) Filed December 21, 1882. J. A. Jones, clerk.

31 F.—*Chancery summons.*

STATE OF ILLINOIS,
Union County, ss:

The people of the State of Illinois to the sheriff of Sangamon County, greeting:

We command you that you summon The Cairo and St. Louis Railroad Company, Charles P. Swigert, William S. Hanners, Henry Rendleman, and The Unknown Holders of the Jonesboro' City bonds, issued in aid of the Cairo and St. Louis Railroad Company, if they shall be found in your county, personally to be and appear before the circuit court of said county of Union on the first day of the next term thereof, to be holden at the court-house in Jonesboro', in said county, on the first Monday of September, A. D. 1882, to answer unto The City of Jonesboro' the matters and things contained in its certain bill of complaint, to cancel bonds, and for other relief, and for injunction filed in said court on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon as to the manner in which you shall have executed the same.

Witness Edward M. Barnwell, clerk of said court, and the seal
32 thereof, at Jonesboro,' in said county, this 24th day of June, A. D. 1882.

[SEAL.] E. M. BARNWELL, *Clerk*,
By HENRY P. COZBY, *Deputy*.

Sheriff's return.

STATE OF ILLINOIS,
Sangamon County, ss:

I duly served the within by reading and delivering a true copy thereof to Charles P. Swigert, auditor of public accounts of the State of Illinois, June 28, 1882. The other defendants within named not served, not having been found in my county, as I am commanded.

HAMPTON GIBSON, *Sheriff*,
By CHARLES SEAMON, *Deputy*.

(Endorsed:) Filed in circuit court this 29' day of June, A. D. 1882. E. M. Barnwell, clerk.

(Also endorsed:) Filed December 21, 1882. J. A. Jones, clerk.

G.—*Chancery summons.*

STATE OF ILLINOIS,
Union County, ss:

The people of the State of Illinois to the coroner of said county, greeting:

We command you that you summon The Cairo and St. Louis Rail-
road Company, Charles P. Swigert, William S. Hanners, Henry
33 Rendleman, and The Unknown Holders of the Jonesboro' City
bonds issued in aid of the Cairo and St. Louis Railroad Company,
if they shall be found in your county, personally to be and appear before

the circuit court of said county of Union on the first day of the next term thereof, to be holden at the court-house in Jonesboro', in said county, on the first Monday of September, A. D. 1882, to answer unto The City of Jonesboro' the matters and things contained in its certain bill of complaint, to cancel bonds, and for other relief, and for injunction filed in said court on the chancery side thereof. And have you then and there this writ, with an endorsement thereon as to the manner in which you shall have executed the same.

Witness: Edward M. Barnwell, clerk of said court, and the seal thereof, at Jonesboro', in said county, this 24th day of June, A. D. 1882.

[SEAL.] E. M. BARNWNELL, *Clerk*,
By HENRY P. COZBY, *Deputy*.

Sheriff's return.

STATE OF ILLINOIS,
Union County, ss:

I duly served the within by delivering a true copy thereof to
34 Wm. S. Hanners and Henry Rendleman this the 30th day of June, A. D. 1882, and the other defendants named in this writ not found, as I am commanded.

JOHN HARWOOD, *Coroner*.

(Endorsed:) Filed December 21, 1882. J. A. Jones, clerk.

H.—*Certificate of publication.*

STATE OF ILLINOIS,
County of Union:

Circuit court of Union County, September term, A. D. 1882.

THE CITY OF JONESBORO'
vs.
THE CAIRO AND ST. LOUIS RAILROAD COMPANY, Charles P. Swigert, Henry Rendleman, William S. Hanners, and The Unknown Holders of The Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company.
} Bill in chancery to cancel bonds and for other relief, and for injunction.

Affidavit of the non-residence of The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company of the defendants above named, having been filed in the office of the clerk of said circuit court of Union County, notice is hereby given
35 to the said non-resident defendants that the complainant has filed its bill of complaint in said court on the chancery side thereof on the 24th day of June, A. D. 1882, and that a summons thereupon issued out of said court against said defendants, returnable on the fourth day of September, A. D. 1882, as is by law required, and that said bill is still pending in said court and undetermined:

Now, therefore, unless you, the said The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company, shall personally be and appear before the said circuit court of Union County on the first day of the next term thereof, to be holden at the court-house in the city of Jonesboro', in said county, on the fourth day of September, A. D. 1882, and plead, answer, or demur to the said complainant's bill of complaint, the same, and the matters and things therein charged and stated, will be taken as confessed, and a decree entered against you according to the prayer of said bill.

E. M. BARNWELL, *Clerk.*

DAY & GREAR, *Compl't's Solicitors.*
Dated JUNE 24, 1882.

STATE OF ILLINOIS,
County of Union, ss:

36 I, T. F. Bouton, publisher of the Jonesboro' Gazette, a public newspaper printed weekly at Jonesboro', in the county and State aforesaid, do hereby certify that the advertisement of which the annexed is a true copy has been published in said newspaper regularly for 4 consecutive weeks, the first insertion of which was in the paper dated the 8th day of July, 1882, and the last insertion in the paper dated the 29th day of July, 1882.

Dated this 6' day of September, 1882.
(Signed) T. F. BONTON, *Publisher.*

(Endorsed:) Filed Sept. 6, 1882. E. M. Barnwell, clerk.
(Also endorsed:) Filed December 21, 1882. J. A. Jones, clerk.

I.—*Motion to set aside default.*

In the Union County circuit court. Dec. term, 1882.

THE CITY OF JONESBORO'
vs.
THE CAIRO AND ST. LOUIS R. R. CO., CHAS. P. Swigert, Wm. S. Hanners, Henry Rendleman, and The Unknown Holders of the Jonesboro' City bonds issued to the Cairo & St. Louis R. R. Co.

37 And now comes Luther R. Graves, one of the unknown bondholders in above entitled cause, and through his attorneys, Sanders and Williams, moves this honorable court to set aside the default taken in the above cause and open the decree, and that he be allowed to plead, answer, or demur to said bill, as in such cases is provided for in the statute, and herewith files his petition to be made party defendant by name to the above-entitled cause.

SANDERS AND WILLIAMS,
Att'ys for Luther R. Graves.

(Endorsed:) Filed Dec. 4, 1882. E. M. Barnwell, clerk.
(Also endorsed:) Filed December 21, 1882. J. A. Jones, clerk.

J.—*Petition of L. R. Graves to set aside default, &c.*

Union County circuit court, at the September term, A. D. 1882. In chancery.

THE CITY OF JONESBORO'
vs.
THE CAIRO AND ST. LOUIS R. R. CO., CHAS. P. Swigert, Wm. S. Hanners, Henry Rendleman, and The Unknown Holders of the Jonesboro' City bonds issued to the Cairo & St. Louis R. R. Co.

And now comes Luther R. Graves, and through his attorneys,
38 Sanders and Williams, petitions this honorable court that the default taken in the above-entitled cause be set aside, and that through his attorneys aforesaid he be allowed to enter his appearance in said cause, and that he be allowed to plead, answer, or demur as in such cases is provided by the statute; and for grounds for this petition says that he is now, as has been for 10 years last past, a resident of Bennington, in the State of Vermont; that he is the owner and holder of thirteen thousand dollars of the Jonesboro' City bonds referred to in the above-entitled cause; that he purchased them for a valuable consideration, and without any notice whatever of any irregularity in their issue; that he first heard of said above-entitled suit in chancery on or about the 25th day of October, A. D. 1882, too late to employ counsel and defend in said suit at the last term, Sept., A. D. 1882; that there is a good and valid defence to make to each and all of the allegations of said bill of complaint on behalf of the unknown bondholders made parties defendant as such in said bill of complaint; and as holder and owner of $13,000 of the bonds of the city of Jonesboro' in controversy in said bill of complaint, now
39 prays this honorable court to be made party defendant by name to said bill of complaint; that said default be set aside and your petitioner herein be allowed to plead, demur, or answer under the orders of this court; and your petitioner will ever pray, etc.

LUTHER R. GRAVES.

STATE OF NEW YORK,
City & County of New York, ss:

Before me, a notary public in and for said county & State, personally appeared Luther R. Graves, who, being first duly sworn, says upon oath that he has read the above petition to which his name has been signed, and that the statements therein made are true to the best of his knowledge and belief.

LUTHER R. GRAVES.

Subscribed and sworn to before me and in my presence this 21st day of November, A. D. 1882.

[N. P. SEAL.] CHARLES H. ADLER,
Notary Public, New York County.

(Endorsed :) Filed Dec. 4, 1882. E. M. Barnwell, clerk.
(Also endorsed :) Filed December 21, 1882. J. A. Jones, clerk.

40 K.—*Petition for removal to U. S. court.*

STATE OF ILLINOIS,
County of Union, ss:

In the circuit court of Union county.

THE CITY OF JONESBORO' *vs.* THE CAIRO AND ST. LOUIS R. R. CO., CHAS. P. Swiggert, Wm. S. Hanners, Henry Rendleman, and The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo & St. Louis R. R. Co.	Petition for removal by non-resident.

To the honorable the judge presiding in the circuit court of Union County, State of Illinois:

Your petitioner respectfully shows that the matter and amount involved in the above-entitled cause exceeds, exclusive of costs, the sum or value of five hundred dollars.

Your petitioner further shows that the controversy in said suit is between citizens of different States, and that the petitioner was at the time of this suit, and still is, a citizen of the State of Vermont, and that the City of Jonesboro' was then, and still is, a citizen of the State of Illinois, and that your petitioner was at the commencement of this suit, and still
41 is, the owner and holder of thirteen thousand dollars of bonds issued by the City of Jonesboro', the complainant in the above-entitled suit; that they were purchased by petitioner, in the usual course of his commercial business, of A. W. Beasley and Co., in New York City, and that he paid for said 13 bonds the sum of $13,681.03, on or about the 10th day of November, 1880, without any notice whatever of any irregularity of issue or want of authority of law to issue the same.

That petitioner knew nothing whatever of the pendency of said above-entitled suit until on or about the 25th day of October, A. D. 1882, too late to appear and defend in said suit at the September term of the Union County circuit court aforesaid.

And your petitioner offers herewith a bond, with good and sufficient surety, in the penal sum of five hundred dollars, conditioned for his entering in the circuit court of the United States for the southern district of Illinois, on the first day of its session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that this suit was wrongfully or improperly removed thereto.

42 Your petitioner therefore prays this honorable court to proceed no further therein except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States within and for the southern district of Illinois, according to the statute in such case made and provided; and your petitioner will ever pray, etc.

LUTHER R. GRAVES.

SANDERS AND WILLIAMS,
Attorneys for Petitioner.

STATE OF NEW YORK,
New York County, ss:

Luther R. Graves, being duly sworn, on oath deposes and says that he is the petitioner herein in the above-entitled cause; that he has read the foregoing petition and knows the contents thereof, and that the matters and things therein stated are true as he verily believes.

LUTHER R. GRAVES.

Subscribed and sworn to by said Luther R. Graves this twenty-first day of November, A. D. 1882.

Before me.

[N. P. SEAL.] CHARLES H. ADLER,
Notary Public, New York County.

43 (Endorsed:) Filed this 4' day of December, A. D. 1882. E. M. Barnwell, clerk.

(Also endorsed:) Filed December 21, 1882. J. A. Jones, clerk.

L.—*Bond for removal.*

Know all men by these presents that we, Luther R. Graves, of Bennington, Vermont, as principal, and Frank W. Tracy and George A. Sanders, of Springfield, in the county of Sangamon and State of Illinois as surety, are held and firmly bound unto the mayor and council of the City of Jonesboro', and their successors in office, in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, and our heirs, executors, or administrators, jointly, and severally *and* firmly by these presents.

Witness our hands and seals this 15th day of November, A. D. 1882.

The condition of this obligation is such that if the above-bounden Luther R. Graves, Frank W. Tracy, and George A. Sanders shall enter and file, or cause to be entered and filed, in the next circuit court of the United States in and for the southern district of Illinois, on the first day
44 of its next session, copies of all process, pleadings, depositions, testimony, and other proceedings in a certain suit or action now pending in the circuit court of Union County, State of Illinois, in which the City of Jonesboro' is plaintiff, and The Cairo and St. Louis Railroad Co., Chas. P. Swiggart, Wm. S. Hanners, Henry Rendleman, and The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo & St. Louis Railroad Company, defendants, and shall do such other appropriate acts as by the act of Congress in that behalf are required to be done upon the removal of such suit from said State court into the United States court, then this obligation to be void; otherwise of force.

LUTHER R. GRAVES. [SEAL.]
FRANK W. TRACY. [SEAL.]
GEO. A. SANDERS. [SEAL.]

(Endorsed:) Filed this 4' day of December, 1882. E. M. Barnwell, clerk.

(Also endorsed:) Filed December 21, 1882. J. A. Jones, clerk.

UNITED STATES OF AMERICA,
State of Illinois, Union County, ss:

In circuit court, September term, A. D. 1882.

Pleas before the honorable Daniel M. Browning, one of the judges of the first judicial circuit of the State of Illinois and sole presiding judge of the circuit court of Union County, in the State aforesaid, and at a term thereof begun and held at the court-house in the city of Jonesboro', in said county, on the first Monday (being the 4th day) of September, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh (107).

Present: Honorable Daniel M. Browning, judge; Edward M. Barnwell, clerk; Daniel W. Karraker, State's attorney; Henry Rendleman, sheriff.
Attest:

EDWARD M. BARNWELL, *Clerk.*

Be it remembered, to wit, on the 6th day of September, A. D. 1882, it being one of the regular days of the term of court aforesaid, the fol-
46 lowing among the proceedings were had and entered of record in said court, to wit:

THE CITY OF JONESBORO'
vs.
THE CAIRO & ST. LOUIS R. R. CO. ET ALS.
} Bill to cancel bonds, and for other relief, and for injunction.

And now on this day comes the complainant, by Day and Grear, its solicitors, and it appearing to the court here from the writs issued herein to the coroner of Union County and to the sheriff of Sangamon County that the defendants Henry Rendleman, sheriff of Union County, and William S. Hammers, county clerk of Union County, and Chas. P. Swigert, auditor of the State of Illinois, had been duly served with process at least ten days prior to the first day of the present term of this court, and it also appearing that the unknown holders of the bonds hereafter named had been duly served with notice by publication made, according to the statute in such case provided, more than forty days before said first day of said term of court, and based upon the affidavit by said statute provided,
47 and the defendants lawfully served as aforesaid having been severally called three times in open court to plead, answer, or demur to the complainant's bill, come not, but herein made default. It is therefore ordered, adjudged, and decreed that the same be taken for confessed against the defendants.

And the cause having come on to be heard by the court upon the complainant's bill, and the proofs and the evidence before said court taken from the sworn testimony of the witnesses, and the other evidences adduced, and the court being fully advised in the premises doth find that the allegations in said bill contained are true as therein stated; that the court has jurisdiction of the subject-matter and the parties in this cause, and that the equity of this cause is with the complainant.

The court doth find that in A. D. 1857 the complainant was organized as a city under a special law, and acted under said charter until A. D. 1874; that said charter provided that said city should not levy a tax upon the taxable property within its limits of more than 50 cents upon the one hundred dollars of valuation; that there was a power in said charter
48 given to borrow money for corporate purposes, upon a two-thirds
vote of the people, subject to the limitation aforesaid; that in April, 1868, a special election was held, in every way unauthorized and void under said charter and the laws of said city, for the purpose of subscribing fifty thousand dollars to the Cairo and St. Louis R. R. Co., at which election two-thirds of the voters of said city did not vote for the proposition to subscribe, neither did a majority of them so vote, taking as a standard the number of votes cast in said city at the last general election for county officers.

The court doth further find that at the time of said vote, and at all times since then, it would have required a levy of $3.50 on the one hundred dollars valuation to pay the interest alone on said fifty thousand dollars.

The court doth further find that in 1869 the legislature of the State of Illinois passed an act entitled ' An act to amend the charter of the Cairo & St. Louis R. R. Co.;" that at, before, and after the passage of said act, its going into effect, and becoming a law there was no contract or
49 agreement on the part of the complainant to subscribe to the capi-
tal stock of said railroad company; that said act limited the levy of taxes to pay any subscription to said company to $1.00 on the hundred dollars of valuation of property in the municipality subscribing stock to said company; that there was no object stated in the title of said act to legalize any election, and that such act did not legalize said election.

The court doth further find that in 1871, after the adoption of the constitution of 1870 of the State of Illinois, at which time there was no agreement or contract on the part of complainant to subscribe any amount to the stock of said railroad company, the city council of said city passed an ordinance subscribing fifty thousand dollars to the capital stock of said company, which said ordinance prescribed certain conditions upon which said subscription should be made, which conditions were imposed by the said vote of the citizens of said city at the election aforesaid; and by said ordinance such conditions were to be imbodied in the bonds which were to be issued in payment of such subscription; that such conditions
50 were as follows: First, said bonds were to be made payable, at the
option of said city, within twenty years from date; 2d, they were to be conditioned that such railroad should be completed within a reasonable time; 3rd, they should be conditioned that said road should pass through said city, with a depot at some convenient place to the acceptance of the city council; 4th, that when the said road was graded from either extreme through the city one-half of said bonds should be paid, and the other half when the road was completed; 5th, such bonds should be non-negotiable. The said city, in said ordinance, attempted to delegate authority to one John E. Naill to deliver such bonds when the conditions of their delivery should have been complied with, and provided that before such bonds were delivered to said John E. Naill they should be cancelled.

The court doth further find that the kind of railroad contemplated by the people and officers of complainant was a road of the ordinary 4 ft. 8½ inch gauge; that before said road had been graded from either extreme 51 bonds numbered from one to twenty-five were delivered fraudulently to said railroad company, and fraudulently registered as issued under the act of 1869 aforesaid, which bonds have found their way into the hands of the "unknown holders" aforesaid, who, as well as all defendants, had full notice of all the finds of the court herein set forth, and all the rights of the complainant. The following is a copy of said bonds:

No. .] *City of Jonesboro' railroad bonds.* [$100.

Know all men by these presents that the city of Jonesboro', in the county of Union and State of Illinois, acknowledges itself indebted and bound unto the Cairo and St. Louis Railroad Company, or bearer, in the sum of one thousand dollars, which sum the city of Jonesboro' promises to pay to said Cairo and St. Louis Railroad Company, or bearer, twenty years from the date hereof, at the National Bank of Commerce in the city of New York, with interest at the rate of eight per centum per annum, payable annually at said bank, on the first day of July in each year, upon presentation and surrender of the annexed coupons as the' severally become due.

This bond is issued under and by virtue of the charter of said 52 city, and of ordinances passed in pursuance thereof, in payment of so much of the subscription by said city for fifty shares of the capital stock of said Cairo and St. Louis Railroad Co., the proposition to subscribe for said stock having been first submitted, as required by law, to the qualified voters of said city for their approval or rejection, at a special election regularly held for that purpose at the various voting precincts or wards in and of said city on the 6th day of April, A. D. 1868, and more than two-thirds of said voters having at said election assented thereto, and said majority of voters also being a majority over all the votes cast at the last preceeding regular election held in and for said city, and said Cairo and St. Louis Railroad Company having duly performed all the conditions of said subscription to be performed on its part before said bond was to be issued.

In testimony whereof said city has caused these presents to be sealed with its seal, and to be signed by its mayor and countersigned by its treasurer and clerk, this first day of July, A. D. 1872.

, *Mayor.*

Countersigned:

, *Treasurer.*
, *Clerk.*

53 The court doth further find that said bonds were not voted for by the people; that they were not the bonds prescribed by said ordinance; that such bonds were unauthorized either by the vote of the people, the ordinance of said city, the charter of said city, or the laws of the State of Illinois.

The court doth find that such bonds were not made payable at the option of the city; that they were not made non-negotiable; that they contained none of the conditions prescribed by said vote and ordinance.

The court doth find that said railroad was never graded from either extreme, nor has it ever been completed, and that it was a narrow gauge instead of 4 ft. 8½ inch gauge, and that said city re'cinded said contract for such reason, and successfully resisted an attempt to coerce the second issue of said bonds, which is res judicata on the question of performance by said railroad company of such conditions.

The court doth further find that good cause has been shown for payment of any interest paid, and that complainant has not been negligent in the prosecution of this action; and, finally, that there was a total want of power in any one to issue the above described bonds.

54 It is therefore ordered, adjudged, and decreed that the said Chas. P. Sweigert, and his successors in the office of auditor aforesaid, be perpetually enjoined from levying and certifying any levy of tax or any per cent. of tax levy for the purpose of paying either principal or interest of said bonds or any of them. And it is further ordered, adjudged, and decreed that the said William S. Hanners, county clerk aforesaid, and his successors in said office of county clerk, be perpetually enjoined from extending any tax for the payment of any such principal and interest on the bonds aforesaid, and from in any way certifying or proceeding in any manner or form to further the collection of any such tax to pay any such principal or interest upon any of said bonds. And it is further ordered, adjudged, and decreed that the said Henry Rendleman, sheriff of said county, and his successors in said office of sheriff, be perpetually enjoined from in any way collecting or attempting to collect any tax for the purpose of paying either principal or interest of said bonds. And it is further ordered, adjudged, and decreed that the unknown holders of said
55 bonds be perpetually enjoined from disposing of or negotiating said
bonds, and from receiving or attempting to receive any interest or principal of said bonds from any one, and that said holders be required to bring said bonds into court for the purpose of having them cancelled. And it is further ordered, adjudged, and decreed that said bonds numbered from 1 to 25, inclusive, are declared null and void.

And afterwards, to wit, on the 4th day of December, A. D. 1882, the same being of the September term of said court, the following further proceedings were had and entered of record in said court in said cause, to wit:

THE CITY OF JONESBORO'
vs.
THE CAIRO AND ST. LOUIS R. R. CO., CHARLES P. Sweigert, Wm. S. Hanners, Henry Rendleman, and The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company.

2086. Bill to cancel bonds, and for other relief, and for injunction.

56 Now on this day comes Luther R. Graves, one of the unknown bondholders defendants aforesaid, and through his attorneys, Sanders and Williams, moves the court to set aside the default taken in this cause on the 6th day of September, 1882, and to open the decree entered herein, and that he be allowed to plead, answer, or demur to said complainant's bill herein as he deems best, and also files his petition to be made a party defendant by name to said bill.

And the court having considered said motion and petition, and being fully advised in the premises, doth order, adjudge, and decree that the same be, and are hereby, sustained, and that said default be, and is hereby, set aside and said decree opened, and that said Luther R. Graves be, and he is hereby, made a party defendant to said bill, and that he be allowed to plead, answer, or demur to said bill as he deems best.

Whereupon the said defendant Luther R. Graves, through his said attorneys, files his petition for a removal of this cause from this court to the United States circuit court in and for the southern district of Illinois; and the said defendant having filed his bond as required by law in such cases, which bond is by the court approved:

57 It is ordered, adjudged, and decreed by the court that said petition be, and the same is hereby, allowed, and that this cause be removed from this court to the circuit court of the United States within and for the southern district of Illinois, and that the clerk of this court make out, certify, and transmit to the clerk of said circuit court of the United States for the southern district of Illinois copies of all the files in this cause, as also a certified copy of the proceedings of this court herein.

State of Illinois,
Union County, ss:

I, Edward M. Barnwell, clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify that the foregoing is a true, perfect, and complete transcript of the proceedings had and orders and decrees made and entered of record in said cause by said court, as copied by me from the records in my office, and that the accompanying papers, marked "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," and "L," are true copies of all the original papers on file in said cause.

58 Witness my hand and the seal of said court, at my office, in Jonesboro', in said county, this 14th day of December, A. D. 1882.

[L. S.]
E. M. BARNWELL, *Clerk,*
By HENRY P. COZBY, *Dept.*

(Endorsed:) Filed December 21, 1882. J. A. Jones, clerk.

And afterwards, to wit, on the 5th day of January, in the year of our Lord 1883, came Luther R. Graves, one of the defendants, by his solicitors, and filed in the clerk's office of said United States circuit court his answer in said cause, which answer is in the words and figures following, to wit:

Answer of Luther R. Graves.

In U. S. circuit court. In chancery. At the Jan'y term, A. D. 1883.

The City of Jonesboro'
vs.
The Cairo and St. Louis R. R. Co. et al.

Luther R. Graves, having been made party defendant to complainant's bill in the above-entitled case by order of court first obtained in the Union County circuit court, State of Illinois, and the case having

59 been certified to the U. S. circuit court for the southern district of Ill's, herewith makes answer to complainant's bill as follows:

Defendant, now and at all times hereafter saving and reserving unto himself all benefits and advantage of exceptions which can or may be had or taken to the many errors, uncertainties, and other imperfections in said bill contained, for answer thereto, or so much and such parts thereof as this defendant is advised it is or may be material or necessary for him to answer unto, answering, says:

That the averment in said bill that the city of Jonesboro' is a corporation under the laws of the State of Illinois, and is now and has been acting, since some time in the year of 1873, under the general laws of Illinois, as an incorporated city, but prior thereto was incorporated and acting under the special charter granted to it by the legislature of the State of Illinois in the year of 1857, and found in the private laws of that year, on pages 74 to 80, inclusive, defendant presumes to be true, but having no personal knowledge of the facts asks proof of the same. Defendant, further
60 answering, says as to the averment that said complainant, while acting under said special charter in the year 1868, by virtue of the power conferred by section 14 of said charter, in words and figures in said bill of complaint then quoted as follows, to wit:

"§ 14. They shall have power to appoint a clerk, and all other officers not made elective by this act which shall be necessary, and the officers thereof created by ordinance of the board. They shall have power to require and approve bonds of all officers appointed in pursuance of this charter, with penalties and security for the faithful performance of their respective duties; to borrow money on the credit of the city, and to issue their bonds under the seal of the city therefor; but no money shall be borrowed on the credit of the city except with the consent of two thirds of the qualified voters of the city. They shall have power to appropriate money, pay debts, and provide for the general welfare of the city; to establish hospitals and make regulations for the government of the same, and to secure the general health of the inhabitants, and to declare what shall be a nuisance, and to prevent and remove the same."

Attempted to subscribe the sum of $50,000 to the capital stock
61 of the Cairo and St. Louis Railroad Company and issue its bonds in payment therefor, and for that purpose, on the second day of March, 1868, adopted the following resolution:

"Whereas at a mass meeting of the citizens of the city of Jonesboro', at the court-house, on the 12th day of February, 1868, the council were requested to submit to the legal voters of said city at an early day whether the city would subscribe $50,000 stock to the Cairo and St. Louis Railroad Company. Therefore be it

"Resolved by the city council of the city of Jonesboro', That the question of the city of Jonesboro' subscribing $50,000 to the capital stock of the Cairo and St. Louis Railroad Company, and issuing bonds therefor, payable within 20 years from date, at the option of the said city, bearing interest at the rate of eight per cent. per annum from date of issue, conditioned that said railroad passes through the corporate limits of said city, with a depot therein at some suitable and convenient place to the acceptance of the city council that said railroad be completed from Cairo to St. Louis within a reasonable time, be submitted to the legal voters

62 of said city at the next regular election to be held on the 6th day
of April, 1868, and that the clerk give the legal notices. And be it further

Resolved, That if a majority of all the legal votes cast at said election be for subscribing $50,000 stock, then in that case, when said railroad shall be graded ready for laying the rails from either of the extreme ends, through the city of Jonesboro', then one-half of said bonds shall be issued, and the other half when the cars are running through from Cairo to St. Louis. Said bonds when issued shall be of the denomination not exceeding $5,000 each, and shall be signed by the mayor and attested by the clerk under the seal of said city and countersigned and registered by the city treasurer." Defendant, as to the above averments of the complainant as to the power of the city of Jonesboro' in their charter cited to act, and as to their action in the exercise of their power thereunder, as quoted above, says he is unadvised and therefor' asks for full proof of the averments of complainant.

As to the resolutions of the city council of the city of Jonesboro', after the adoption of the constitution of 1870, on the 21st day of July, 1870,
cited in complainant's bill, defendant, answering, says he is not ad-
63 vised as to these averments, and neither admitting nor denying
them, asks for said proof of each and all of them.

As to the acts of the Cairo & St. Louis R. R. Co. in completing their road or the kind of road they built, or the depots built and kind of depots, or the terminations of their railroad referred to in complainant's bill and his averments concerning the same, and the actions of one John E. Naill, said to have been an agent for the city of Jonesboro' in the receiving and delivering to said railroad co. the bonds in controversy, and referred to in averments in said bill, defendant, answering, says that he knows nothing of any such transactions, and that he is advised that they are immaterial to the validity of the bonds in issue in this suit; but if they are material, or any questions involved in complainant's bill and the bonds in controversy thereunder, defendant asks for strict proof of each and all averments in complainant's bill in reference thereto.

And defendant, further answering, says, as to averments in complainant's bill, in reference to any fraudulent transactions between John E. Naill, the
alleged agent of the city of Jonesboro' and the said Cairo and St.
64 Louis R. R. Co., in reference to the receiving and delivering of said
bonds, he says he is advised that if there were any such transactions as is alleged in the averments of said complainant's bill, they are not material to the questions involved in this suit, and that he knows nothing of them whatever, and if material to the issues in this case he insists upon strict proof of all such averments.

And defendant, further answering the averments of said complainant's bill, as to the watering of the stock of said railroad co., and the value of the stock of said railroad co. delivered to said complainant, and the squandering and embezzlement of the funds of said railroad co., and false statements to the State authorities, he says he is advised that all these are immaterial to the issues in this case; that he knows nothing whatever of any such transactions or facts concerning them, and if material asks for strict proof of each and all of them.

And, furthering answering, defendant says, as to complainant's averments

in said bill, in regard to a second issue of bonds, that he knows nothing whatever about any such issue, nor that there was any suit whatever pending in which these bonds were at all concerned, or their validity
65 called in question; that he never was a party in any way to any suit with the complainant in reference to these or any other bonds issued by the complainant, and denies that these bonds in controversy in complainant's bill have ever been litigated and settled in any suit in which this defendant was ever a party, nor in any other suit to the knowledge of this defendant. And if there ever was any suit the name and address of this defendant as holder and owner of these bonds could easily have been obtained of the State treasurer of Illinois, who regularly paid the interest on said bonds; and defendant denies that he or his authorized agents have ever offered to compromise said bonds or made overtures to that effect to the complainant, and if these averments present any material issue in this case defendant asks for strict proof of each and all of them.

And defendant, further answering, says that the nine averments made that the bonds in issue herein are void he is advised are mere conclusions of the complainant in his bill, and if they are of any force in law or equity defendant requires full and strict proof of each and every one of
66 said averments, and of the facts upon which they are based, as he knows nothing whatever of allegations beyond the recitals of the bonds purchased in the commercial markets of the country for full value, as hereinafter stated.

And, further answering, defendant says that he knows nothing concerning the averments as to fraudulent registration of these bonds in issue, save what appears on the bonds themselves; that they are endorsed as registered by the auditor of the State of Illinois, Oct. 13th, 1874, by C. E. Lippincott, auditor of Illinois, and attested by his seal of State; that they were registered by the State auditor on the sworn statement of John Gear, then mayor of the city of Jonesboro', wherein he swore that all conditions precedent required by law had been complied with in the issue of these bonds, and that they were thereby entitled to registration under the laws of Illinois; and defendant refers to a certified copy of such registration certificate hereto attached and made a part of this answer, and marked "Exhibit A."

And defendant, answering still further as to the averments that
67 the election was void for insufficiency of notice and that two-thirds of the voters of said city of Jonesboro', nor even a majority, did not consent by their votes to the subscription for the payment of which the bonds in controversy were issued, says that he was not present at the election and knows nothing of the facts, save what appears upon the bonds, which recite upon their face: "This bond is issued under and by virtue of the charter of said city and of ordinances passed in pursuance thereof in payment of so much of the subscription by said city for fifty shares of the capital stock of said Cairo and St. Louis Railroad Company. The proposition to subscribe for said stock having been first submitted as required by law to the qualified voters of said city for their approval or rejection, at a special election regularly held for that purpose at the various voting precincts or wards in and of said city, on the 6th day of April A. D. 1868, and more than two-thirds of said voters having at said election assented thereto, and said majority of voters also being a majority over all the votes

cast at the last preceeding regular election had in and for said city, 68 and said Cairo and St. Louis Railroad Company having duly performed all the conditions of said subscription to be performed on its part before said bond was to be issued.

And defendant, further answering, avers that he is a citizen of Bennington, Vermont; and that in the usual course of his business he purchased in New York City, of A. W. Beasley and Co., on or about the 10' day of November, 1880, thirteen of said bonds issued by the complainant, The City of Jonesboro', of $1,000 each, and paid therefor the sum of $13,681.03, and that he has been and still is the holder and owner of the same. That the numbers of said bonds are 2, 3, 5, 6, 7, 15, 16, 17, 18, 19, 20, 21, and 22, and that his children, whom he represents, are the owners and holders of similar bonds of the city of Jonesboro', numbers 4, 13, and 14, for $1,000 each, purchased on or about the 21st day of Dec., 1880, and for which was paid $3,173.76.

That the interest on these bonds has been regularly paid from their date, July 1, 1872, for ten years or up to July 1, 1882, when all of the interest was paid save on two bonds.

That these bonds were purchased in the commercial market of New York, in the course of business, without any notice whatever of 69 any defect or irregularity in the execution or of want of power to issue said bonds, or of any pending suit involving their validity; that they were dated July 1, 1872, and due in 20 years, at 8 % annual interest, payable at the National Bank of Commerce of New York City. A copy of bond No. 2 is hereby attached to and made part of defendant's answer, and marked "Exhibit B."

And defendant, further answering the allegations of complainant's bills, avers that there was ample and plenary powers under charter of the city of Jonesboro' and the laws of Illinois, to issue these bonds in controversy at the time they were issued, and having cited the laws under which they were issued on their face, sold them upon the distant markets of the country, and paid interest upon them for ten years, the complainant is estopped from now asserting any want of power to issue them or any irregularity in their issue.

And answering, finally, defendant denies that complainant is entitled to the relief, or any part thereof, in said bill of complaint demanded, and prays the same advantage of this answer as if he had plead or demurred to said bill of complainant; and having fully answered all the allegations 70 of said bill material or necessary to be answered, defendant is ready and willing to aver, maintain, and prove all matters herein as this honorable court may direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

LUTHER R. GRAVES.

SAUNDERS and WILLIAMS, *Solicitors.*

STATE OF VERMONT,
Bennington County, ss:

On this 2d day of January, 1883, before me, the undersigned notary public, personally appeared Luther R. Graves, who, being sworn by me, says that he has read the above answer and has signed his name to the same, and that the contents of the same is true of his own knowledge, except as to matters which are stated on his information and belief, and as to those he believes them to be true.

LUTHER R. GRAVES.

Subscribed and sworn to before me this 2d day of January, A. D. 1883.

[L. S.] JAMES B. MEACHAM,
Notary Public.

71 EXHIBIT A.

STATE OF ILLINOIS,
County of Union, City of Jonesboro':

JONESBORO', ILL'S, *September 28th,* 1874.

To the auditor of public accounts of the State of Illinois:

SIR: I hereby certify that the following-described bonds are entitled to registration in your office, under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the bonds being numbered from 1 to 25, incl., for $1,000 each, dated July 1, 1872, and payable July 1st, 1892, being in all 25 bonds, and amounting to $25,000.00, and bearing interest at the rate of 8 per cent. per annum, payable annually on the 1st day of July in each year. These bonds are issued by the city of Jonesboro', in the county of Union and State of Illinois, to the Cairo and St. Louis Railroad Company, under and by authority of the provisions of an act of the general assembly of the State of Illinois approved March 3d, 1869, and by a vote of the people of said city at an election held on the
6th day of April, 1868. And I, as mayor of said city, do hereby
72 certify that all the preliminary conditions in the act in force April
16th, 1869, required to be done to authorize the registration of these bonds, and to entitle them to the benefits of said act last referred to, have been fully complied with to the best of my knowledge and belief.

JOHN GREAR.
Mayor of the City of Jonesboro'.

Attest:
H. SAMSON, *City Clerk.*

Subscribed and sworn to by the said John Grear before me this 28th day of September, A. D. 1874.

[SEAL.] A. POLK JONES,
Cir. Clerk, Union Co., Ills.

(Endorsed:) Filed October 13th, 1874. C. E. Lippincott, auditor public accounts.

AUDITOR'S OFFICE, ILLINOIS,
Springfield, November 25th, 1882.

I, Charles P. Swigert, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of certificate of John Grear, as mayor of the city of Jonesboro', Union County, in regard to registration of bonds issued by said city to the Cairo and St. Louis Railroad Company, now on file in and forming part of the records of this office.

73 In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[L. S.] CHAS. P. SWIGERT,
Auditor Public Accounts.

EXHIBIT B.—*Copy of bond No. 2.*

All the other bonds named in defendant's answer are of similar tenor and effect save as to numbers.

$1,000.] UNITED STATES OF AMERICA. [$1,000.

No. 2.] [Vignette.]

CITY OF JONESBORO'. RAILROAD BOND.

Know all men by these presents that the City of Jonesboro', in the county of Union, State of Illinois, acknowledges itself indebted and bound unto the Cairo and Saint Louis Railroad Company or bearer in the sum of one thousand dollars, which sum the City of Jonesboro' promises to pay to said Cairo and Saint Louis Railroad Company or bearer twenty years from the date hereof, at the National Bank of Commerce, in the city of New York, with interest at the rate of eight per centum per annum, payable annually at said bank on the first day of July in each year upon
74 presentation and surrender of the annexed coupons as they severally become due.

This bond is issued under and by virtue of the charter of said city, and of ordinances passed in pursuance thereof, in payment of so much of the subscription by said city for fifty shares of the capital stock of said Cairo and St. Louis Railroad Company, the proposition to subscribe for said stock having been first submitted, as required by law, to the qualified voters of said city for their approval or rejection, at a special election regularly held for that purpose at the various voting precincts or wards in and of said city on the 6th day of April, A. D. 1868, and more than two-thirds of said voters having at said election assented thereto, and said majority of voters also being a majority over all the votes cast at the last preceding regular election held in and for said city, and said Cairo and Saint Louis Railroad Company having duly performed all the conditions of said subscription to be performed on its part before said bond was to be issued.

In testimony whereof said city has caused these presents to be sealed with its seal, and to be signed by its mayor and countersigned by
75 its treasurer and clerk, this first day of July, A. D. 1872.

[SEAL.] PAUL FRICK, *Mayor.*

Countersigned:
A. POLK JONES, *Treasurer.*
JOHN GREAR, *Clerk.*

$1,000.] STATE OF ILLINOIS. [$1,000.

Copy of coupon No. 2, series 20, attached to bond 2, due July 1st, 1892.

$80.00. The City of Jonesboro' will pay to bearer, on the first day of July, 1892, at the National Bank of Commerce in the city of New York, eighty dollars, for one year's interest on railroad bond No. 2.

JOHN GREAR, *Clerk.*

Endorsed on said bonds is the following registration:

AUDITOR'S OFFICE, ILLINOIS,
Springfield, Oct. 13, 1874.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, 76 townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

(Also:) No. 2. City of Jonesboro' eight per cent. Cairo and Saint Louis Railroad bond. $1,000. Principal due July 1, 1892; interest payable annually on the 1st July.

(Endorsed:) Filed January 5, 1883. J. A. Jones, clerk.

And afterwards, to wit, on Wednesday, the 7th day of February, at the January term of said United States circuit court, in the year last aforesaid, the following proceedings were had in said court in said cause and entered of record, to wit:

Order setting cause for hearing.

CITY OF JONESBORO'
vs.
CAIRO & ST. LOUIS RAILROAD COMPANY ET AL. } 6500. In chancery.

77 On motion of defendants, by Messrs. Sanders and Williams, their solicitors, this cause is set for hearing on the 28th day of February inst.

And afterwards, to wit, on the 24th day of February, in the year last aforesaid, came the parties, by their solicitors, and filed in said cause their stipulation, which is in the words and figures following, to wit:

Stipulation.

In the United States circuit court, southern dist. of Illinois.

THE CITY OF JONESBORO'
vs.
THE CAIRO AND ST. LOUIS R. R. CO. ET AL.

In the above cause it is hereby stipulated and agreed that the signatures of Paul Frick, mayor, A. Polk Jones, treasurer, and John Grear, clerk, to the bonds in controversy in this case are genuine, and also that of John Grear, clerk, to the coupons attached to the bonds; that at the date of said bonds, July 1, 1872, Paul Frick was mayor, A. Polk Jones treasurer, and John Grear was clerk of the city of Jonesboro', each
78 having been duly elected to the respective office of mayor, treasurer, and clerk of said city; that the interest has been regularly paid on said bonds from the date of their delivery to the issuing of the injunction writ, Sept. term, A. D. 1882. It is further agreed that the above cause shall be set for Tuesday, March 20th, 1883, and that a jury be waived.

SANDERS AND WILLIAMS,
For Luther R. Graves.
SIDNEY GREAR,
Attorney for Complainant.

(Endorsed:) Filed February 24, 1883. J. A. Jones, clerk.

And thereupon, on the day last aforesaid (being Saturday), and at said January term of court, the following further proceedings were had in said court in said cause and entered of record, to wit:

Order resetting cause.

CITY OF JONESBORO'
vs. 6500. In chancery.
CAIRO & ST. LOUIS RAILROAD COMPANY ET AL.

By consent of parties by their solicitors this cause is set for hear-
79 ing on the 20th day of March next.

And afterwards, to wit, on Wednesday, the 11th day of April, at said January term of court, and in the year last aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

Final decree.

CITY OF JONESBORO'
vs.
CAIRO AND ST. LOUIS RAILROAD COMPANY; Charles P. Swigert, Auditor of the State of Illinois; William S. Hanners, Clerk of Union County, Illinois; Henry Rendleman, Sheriff of said County; The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company, and Luther R. Graves.
} 6500. In chancery.

And now, on the 11th day of April, 1883, come the parties, by

80 their counsel, and submit this cause to the court for final hearing, and the court having heard and considered their proofs and allegations, and being sufficiently advised in the premises, doth now order and decree that the complainant's bill be dismissed with costs and that the injunction heretofore ordered in this cause be dissolved.

And the complainant is allowed an appeal from this decree to the Supreme Court of the United States, not to operate as a supersedeas, on its entering bond to the defendant Luther R. Graves, in the penalty of five hundred dollars, conditioned as the law directs, with sureties to be approved by the court, within sixty days from this date.

And afterwards, to wit, on the 8th day of June, in the year last aforesaid, came the parties by their respective solicitors, and filed in said clerk's office their agreement as to evidence offered on the trial of said cause, which agreement was signed by the judge, and is in the words and figures following, to wit:

81 *Agreement as to evidence offered in case.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In the circuit court to the January term, 1883.

THE CITY OF JONESBORO'
vs.
THE CAIRO AND ST. LOUIS R. R. CO., LUTHER Graves, et al.
} In chancery.

Be it remembered that on the trial of this cause at this term the complainant, to sustain the issues in its behalf, produced, offered, and gave in evidence the following, viz:

One of the bonds involved in the suit being produced by defendant Graves was read in evidence, and is in the words and figures following:

1.—*Copy of Jonesboro' City bonds.*

$1,000.] UNITED STATES OF AMERICA. [$1,000.

No. 2.] [Vignette.]

$1,000.] CITY OF JONESBORO'. RAILROAD BOND.

Know all men by these presents that the City of Jonesboro', in the county of Union, State of Illinois, acknowledges itself indebted and bound unto the Cairo and Saint Louis Railroad Company, or bearer, in the sum
of one thousand dollars, which sum the City of Jonesboro' promises
82 to pay to said Cairo and Saint Louis Railroad Company, or bearer,
twenty years from the date hereof, at the National Bank of Commerce, in the city of New York, with interest at the rate of eight per centum per annum, payable annually at said bank on the first day of July in each year upon presentation and surrender of the annexed coupons as they severally become due.

This bond is issued under and by virtue of the charter of said city, and of ordinances passed in pursuance thereof, in payment of so much of the subscription by said city for fifty shares of the capital stock of said Cairo and St. Louis Railroad Company. The proposition to subscribe for said stock having been first submitted, as required by law, to the qualified voters of said city for their approval or rejection, at a special election regularly held for that purpose at the various voting precincts or wards in and of said city, on the 6th day of April, A. D. 1868, and more than two-thirds of said voters having at said election assented thereto, and said majority of voters also being a majority over all the votes cast at the last
preceding regular election held in and for said city, and said Cairo
83 and Saint Louis Railroad Company having duly performed all the
conditions of said subscription to be performed on its part before said bond was to be issued.

In testimony whereof said city has caused these presents to be sealed with its seal, and to be signed by its mayor and countersigned by its treasurer and clerk this first day of July, A. D. 1872.

[SEAL.] PAUL FRICK, *Mayor.*

Countersigned:
A. POLK JONES, *Treasurer.*
JOHN GREAR, *Clerk.*

(Endorsement on back of bond:)

AUDITOR'S OFFICE, ILLINOIS,
Springfield, Oct. 13th, 1874.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

84 Complainant next offered a private law of the State of Illinois, approved and in force January 28th, 1857, entitled "An act to incorporate the inhabitants of Jonesboro'," found on page 74, Private Laws of 1857:

2.—*Charter of city of Jonsboro'.*

ARTICLE I.—OF BOUNDARIES AND GENERAL POWERS.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that the inhabitants of the town of Jonesboro', in the county of Union, and State of Illinois, be, and they are hereby, constituted a body politic and corporate by the name and style of "The city of Jonesboro';" and by that name shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

§ 2. Said city of Jonesboro' shall comprehend all that district of country embraced within the following limits, to wit: a territory one and a half miles square, the centre of which shall be the point or extreme northeast corner of the public square in the town of Jonesboro', and also all that territory not included within said boundaries as was included within the boundaries of Jonesboro' by the act approved February 14th, 1821, 85 entitled "An act appointing trustees of the towns of Jonesboro', America, Covington, Vienna, and the village of Prarie du Rocher;" provided, that the legally established boundaries of Anna shall not be interfered with by the boundaries of Jonesboro' herein provided for.

§ 3. The city counsel shall also have the power to enlarge the boundaries by ordinance, not exceeding two miles north, south, east, and west, from said established centre.

§ 4. Willis Willard, Caleb Frick, John E. Naill, William Green shall constitute the present board of trustees of said city of Jonesboro', and on the first Monday of April next shall divide the city into three wards, as nearly equal in population as practicable, particularly describing the boundaries of each ward.

ARTICLE II.—OF CITY COUNCIL.

§ 5. There shall be a city council, to consist of a mayor and board of aldermen.

§ 6. The board of aldermen shall consist of one member from each ward, to be elected by the legal voters of the respective wards for two years, and in case of removal from the ward for which he is elected his of- 86 fice shall thereby become vacated, and no alderman shall be elected whose residence is out of the ward for which he is elected. The city council shall be the judges of the election and qualification of their own members, and shall determine all contested elections, and a majority shall constitute a quorum to do business, and may, by a concurrence of two-thirds, expel a member.

§ 7. The city council shall keep a record of its proceedings, and from time to time publish the same, and all vacancies shall be filled by election.

§ 8. The mayor and aldermen, before entering upon the duties of their office, shall take an oath to support the Constitution of the United States and of this State, and well and truly perform the duties of their office to the best of their ability; and all other officers shall qualify in the same way, and in case of a tie in election the trustees or aldermen shall certify the same to the mayor, who shall determine the same by lot.

§ 9. There shall be twelve regular meetings of said city council in each year at the times and places prescribed by ordinance of said board.

§ 10. The mayor shall be elected by the qualified voters of the city;
shall be the chief executive and judicial officer of the same, and
87 hold his office for one year and until his successor is elected and quali-
fied; he shall be a resident of the city, a qualified voter thereof,
and in case of removal from the city his office shall thereby be vacated;
and in case of a tie the city council shall determine the election by lot, and
be elected on the first Monday of April annually.

§ 11. The present trustees named in this act shall by ordinance provide for the first election of mayor and aldermen; shall canvass the votes and declare who are duly elected, and make return of the election to the clerk of the county court and to the secretary of state of the election of mayor in the same manner that returns are made of the election of justices of the peace.

§ 12. At such general election of mayor and aldermen there shall be elected a treasurer, marshal, assessor, and one street commissioner, whose term of office shall be one year, and until his successor shall be elected and qualified.

§ 13. The city council shall have power to levy and collect taxes, assess
all property, real and personal, within the limits of the city, not exceed-
ing one half of one per cent. per annum upon the assessed value
88 thereof for general purposes, and may enforce the payment of the
same in such manner as they may prescribe by ordinance not re-
pugnant to the constitution or laws of this State or of the United States,
and may also in the same way levy and collect a tax for school purposes
not to exceed one-fourth of one per cent. on the value of all property
within the city.

§ 14. They shall have power to appoint a clerk and all other officers
not made elective by this act which shall be necessary and the officers
thereof created by ordinance of the board; they shall have power to require
and approve bonds of all officers appointed in pursuance of this charter,
with penalties and security for the faithful performance of their respective
duties; to borrow money on the credit of the city and issue their bonds
under the seal of the city therefor; but no money shall be borrowed on
the credit of the city except with the consent of two-thirds of the quali-
fied voters of the city; they shall have power to appropriate money, pay
the debts, and provide for the general welfare of the city; to establish
hospitals, and make regulations for the government of the same,
89 and to secure the general health of the inhabitants, and declare
what shall be a nuisance, and to prevent and remove the same.

§ 15. They shall have power to open, widen, alter, abolish, establish, grade, pave, and keep in repair the streets, lanes, alleys, avenues, and public squares and grounds of the city; to divide the city into wards, alter boundaries thereof, and establish additional wards.

§ 16. They shall have power to provide for lighting the streets, erect lamp-posts, erect and maintain market-houses and markets, and provide for the government thereof.

§ 17. To license, tax, and regulate auctioneers, merchants, retailers, grocers, taverns, ordinaries, hawkers, pawnbrokers, money-changers, showmen, insurance agents, and offices, and license the retail of liquors by druggists for medicinal, mechanical, and artistic purposes.

§ 18. To license hackney carriages, wagons, carts, drays, and fix the
rates thereof; they shall have power to license porters and fix the rates of
porterage; to license, tax, and regulate theatrical shows and other amuse-
ments; to tax, restrain, prohibit, and suppress tippling houses, dram
90 shops, and gambling houses, and bawdy houses; and provide for
the extinguishing of fires, and make regulations to prevent fires
in the city, and enforce obedience to such regulations; to regulate weights
and measures in the city in all cases not otherwise provided for by law.

§ 19. They shall have power to fix the compensation of all city officers, fees of jurors, witnesses, and for all other services rendered to the city by ordinances or the provisions of this charter; to restrain street beggars, and to punish the authors of nuisances by fine and imprisonment, or either, or by causing the same to be abated.

§ 20. They shall have the power to regulate the police of the city, to impose fines and forfeitures and penalties for the breach of any ordinance, and to provide for the recovery and appropriation of such fines and forfeitures, and the enforcement of such penalties; and shall have power to make all ordinances which shall be necessary and proper for carrying into execution the powers specified in this act, not, however, to be repugnant to the constitution and laws of this State or of the United States.

§ 21. The style of all ordinances passed shall be "Be it enacted by the city of Jonesboro'."

91 § 22. All ordinances passed by the city council shall be published in some newspaper printed in the city within one month after the passage of the same, and shall not be in force before so being published.

§ 23. They shall have power to lay off the city into school districts and alter the same at pleasure; to purchase real estate and erect schoolhouses thereon, and provide for the government thereof, fix the compensation of teachers, and remove them at pleasure.

§ 24. All ordinances of the city may be proved by the seal thereof, and when printed or published in book or pamphlet form, and purporting to be printed and published by authority of the corporation, the same shall be received in evidence in all courts and places without further proof.

OF THE MAYOR.

§ 25. The mayor shall preside at all meetings of the council, and shall have the casting vote; in case of his absence the board of aldermen shall appoint one of their own number to preside at such meeting during his absence.

§ 26. The mayor or any two of the aldermen may call a special meeting of the board to transact business.

92 § 27. The mayor shall superintend the conduct of all subordinate officers, and see that the laws and ordinances are enforced and obeyed, delinquencies punished, communicate to the board of aldermen such information, and recommend such measures, as he shall deem proper.

§ 28. He is hereby authorized and empowered to call upon any male inhabitant of the city, over the age of eighteen years, to aid in enforcing the laws and ordinances, and in case of riots to call out the militia to aid him in suppressing the same, or in carrying into effect any laws or ordinances, and any such person who shall fail or refuse to obey such call shall forfeit to said city a fine not to exceed twenty-five dollars.

§ 29. He shall have power to require of any of the officers of said city an exhibit of his books and papers, and to execute all ordinances made in pursuance of this act.

§ 30. He shall be commissioned by the governor as justice of the peace of said city, and shall have power and authority to administer oaths, open courts, and proceed under the seal of the city, take depositions, and all the jurisdiction and authority of justice of the peace in this State, and in addition thereto such additional jurisdiction as is herein provided,
93 and shall also have jurisdiction in all actions in the case where the
damages claimed do not exceed one hundred dollars. He shall have jurisdiction in all cases arising under this charter and the laws and ordinances of *of* the corporation, and concurrent jurisdiction with all other justices of the peace in all civil and criminal cases arising *from* the laws of this State, and shall receive the same fees and compensation for his services in similar cases, and also such jurisdiction as may from time to time be vested in him not inconsistent with the laws and constitution of this State and of the United States, and in addition to his fees as justice of the peace he shall receive for his services such salary as shall be fixed by an ordinance of the city; and in case he shall be guilty of palpable evasion, omission of duty, or of wilful or corrupt oppression, malconduct or partiality in the discharge of the duties of his office, he shall be indicted in the circuit court of Union County, and forfeit and pay a sum not exceeding two hundred dollars, and, on recommendation of the jury who try the same, be removed from his office by the court.

94 § 31. Whenever it may become necessary to take private property for opening or widening streets or alleys, the corporation shall make just compensation to the person whose property is so taken; and in case of disagreement as to the value thereof, the mayor shall cause the same to be ascertained by a jury of six freeholders of the city; but the persons petitioning for such improvement shall not, after such petition is signed by them, be entitled to any damages or compensation; but the mayor, for good cause, may set aside an award of damages and grant another disinterested jury of freeholders, to consist of six.

§ 32. The city council may, by ordinance for that purpose, levy and collect an additional and special tax for the improvement of any street, lane, or alley, or part thereof, to be paid by the owners of losts or lands lying immediately on the same, according to the respective fronts on the same, for the purpose of planking, paving, grading, lighting, or otherwise improving the same.

§ 33. The inhabitants of the city of Jonesboro' are hereby exempt from working roads beyond the limits of the city.

§ 34. The city council shall have power to compel all able-bodied
95 male inhabitants of said city over twenty-one years and under fifty years of age to work five days each year on the streets and alleys of the city, in addition to all other taxes and assessments; and any person refusing or neglecting so to work upon being served with a written notice shall forfeit and pay to the city the sum of one dollar per day.

§ 35. All suits and prosecutions instituted, commenced, or brought by the corporation hereby created shall be so commenced and brought in the name of the city of Jonesboro'.

§ 36. In all cases of the trial of the right of way under the provisions of this charter the jury in assessing compensation and damages shall be governed by the provisions of chapter ninety-two of the Revised Statutes, entitled "Right of Way," and appeals allowed in the same way as provided therein.

§ 37. The first precept in all cases shall be a summons, unless oath be made for a warrant as in other cases; and upon all judgments executions may issue forthwith unless appeals be taken on the day of the rendering of the judgment.

§ 38. In all actions before the mayor to recover any penalty or for-
96 feiture incurred under this act, or the ordinances or regulations made in pursuance thereof, it shall be lawful to sue in debt for such forfeiture or penalty, stating the clause of this act or the law or ordinance under which the forfeiture is claimed in the account filed, and to give special matter in evidence under it. No cost bond need be filed and no other pleading' but an account made out and filed for the amount in the form of an account due the city of Jonesboro'.

§ 39. No person shall be incompetent as a judge, justice of the peace, witness, mayor, or juror by reason of his being an inhabitant or freeholder of the city, in actions where the city is a party.

§ 40. All officers of said city are hereby created conservators of the peace, and should have power to arrest, or cause to be arrested, with or without process, all persons who shall threaten to break the peace, or who shall be conducting themselves in a noisy or riotous manner, commit them for examination, or detain them in custody in a common jail over night, and exercise all other power as conservators of the peace usually exercised by conservators of the peace in this State.

97 § 41. Any person elected to any office in said city refusing or neglecting to qualify and serve as such officer, unless prevented by removal or bodily infirmity, shall forfeit and pay to the city the sum of twenty-five dollars.

§ 42. Appeals shall be allowed in all cases under the provisions of this act to the circuit court of Union County, if prayed for and perfected on the day of rendition of judgment, in the same way that appeals are allowed from justices of the peace, and the trials thereof to be governed in all respects as trials from justices of the peace in said courts under the laws of this State.

§ 43. In all cases when the mayor shall absent himself, remain from the city, resign, or die, or his office be otherwise vacated than by expiration of his term of office, the board of aldermen shall forthwith appoint one of their number who shall take the oath of office and exercise all the powers of mayor until a successor shall be elected and qualified, and the order on

the records of the city appointing him such mayor, or a duly certified copy
thereof, under the seal of the corporation, shall be evidence of his
98 official capacity to act in all respects as such mayor until the election and qualification of his successor under the provisions of this act.

§ 44. This act is hereby declared a public act, and shall be taken in evidence in all courts of law and equity within the State without further proof, and shall take effect and be in force from and after its passage.

Approved Jan. 28, 1857.

Complainant next offered in evidence a private law of the State Illinois approved and in force February 16th, 1865, entitled "An act to incorporate the Cairo & St. Louis Railroad Company," found on page 135, volume 2, private laws of Illinois of 1865.

3.—*Charter of Cairo & St. Louis R. R. Co.*

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That Sharon Tyndale, Isham N. Haynie, Samuel Staats Taylor, John Thomas, William H. Logan, William P. Halliday, and Tilman B. Cantrell, and their associates, successors, and assigns, be, and they hereby are, created a body politic and corporate under the name and style of "The Cairo and St. Louis Railroad Com-
99 pany," and by that name be, and they are hereby, made capable,
in law and in equity, to sue and be sued, plead and be impleaded, defend and be defended in any court of law and equity in this State or elsewhere; to make, have, and use a common seal, and the same to renew and alter at pleasure; and shall be, and hereby are, vested with all powers, privileges, and immunities which are or may be necessary to construct, complete, and operate a railroad, with double or single track, from the city of Cairo to any point opposite the city of St. Louis, in the State of Missouri, and for that purpose to enter upon and take possession of so much land as may be necessary to construct, complete, and operate said railroad and its appendages; and if said company cannot agree with the owner or owners of said land taken as aforesaid, it may be lawful for them to proceed in the manner now provided by the laws of this State for the condemnation of lands by incorporated companies, and may also exercise for said purpose all such powers as have been heretofore or may be hereafter conferred upon any other railroad company incorporated by the laws of this State.

100 § 2. The capital stock of said company shall be three millions of
dollars, which may be increased by said company to any sum not exceeding five millions of dollars, which may be divided into shares of one hundred dollars each, which shall be deemed personal property, and may be issued and transferred in such manner as the board of directors may prescribe.

§ 3. The affairs of said company shall be managed by a board of seven directors, which may be increased to any number not exceeding thirteen; and Sharon Tyndale, Isham N. Haynie, Samuel Staats Taylor, John Thomas, William H. Logan, William P. Halliday, and Tilman B. Cantrell are hereby appointed the first board, who shall hold their offices until their successors are elected and qualified, in such manner as may be prescribed by the by-laws of said company. Said board shall have the power of electing one of their number president, and such other officers as may be prescribed by the by-laws; and said corporation shall be, and is hereby, vested with all the powers conferred upon railroad incorporations by the general railroad laws of the State of Illinois, or any amendment now made or hereafter to be made thereto.

101 § 4. Said corporation shall have power to unite its railroad with any other railroad now constructed, or which shall hereafter be constructed, upon such terms as may be mutually agreed upon between the companies so connecting, and from time to time to borrow such sums of money as may be necessary for the purposes of said company, and at any rate of interest not exceeding ten per cent. per annum, and to issue and dispose of their bonds, in denominations of not less than one hundred dollars, for any amount so borrowed, and to mortgage their corporate property, real or personal, and their franchise, or convey the same by deed of trust, to secure the payment of any money so borrowed or any other debt of said company.

§ 5. Nothing contained in this act or in any law of this State shall authorize said company to take, for the uses and purposes of the company or otherwise, or to impair any portion of the levees or embankments already constructed and erected around the city of Cairo, or to be constructed and erected by the trustees of the Cairo City property, or by any person or
102 corporation, under existing agreements with them, except by the consent of said trustees and of the city of Cairo.

§ 6. This act shall be a public act, and shall take effect and be in force from and after its passage.

Approved February 16, 1865.

Complainant next offered a resolution adopted by the city council of said city on March 2, 1868.

4.—*Resolution of city of Jonesboro' submitting question of subscription.*

RESOLUTION.

Be it resolved by the city council of the city of Jonesboro', That the question of the city of Jonesboro' subscribing fifty thousand dollars to the capital stock of the Cairo and St. Louis Railroad Company, and issuing bonds therefor, payable within 20 years from date, at the option of said city, bearing interest at the rate of 8 per cent. per annum from date of issue, conditioned that said railroad passes through the corporate limits of said city, with a depot therein at some suitable and convenient place to the acceptance of the city council, that said railroad be completed from Cairo to St. Louis within a reasonable time, be submitted to the
103 legal voters of said city at the next regular election, to be held on the 6th day of April, 1868, and that the clerk give the legal notices.

And be it further resolved, That if a majority of all the legal votes cast at said election be for subscribing $50,000 stock, then in that case, when said railroad shall be graded ready for laying the rails from either of the extreme ends through the city of Jonesboro' then one-half of said bonds shall be issued, and the other half when the cars are running through from

Cairo to St. Louis. Said bonds when issued shall be of the denominations not exceeding $5,000 each, and shall be signed by the mayor, attested by the city clerk, under the seal of said city, and countersigned and registered by the city treasurer.

Passed and approved Mar. 2d, 1868.

PAUL FRICK, *Mayor.*

Attest:

J. H. SAMSON, *City Clerk.*

STATE OF ILLINOIS,
Union County, City of Jonesboro':

I, J. Henry Hilboldt, clerk of the city of Jonesboro', do hereby certify that the foregoing is a true and correct copy of resolution passed
104 and approved by the city council on the 2d day of March, 1868.

In witness whereof I have hereunto set my hand and seal this 26th day of February, A. D. 1883.

[L. S.] J. HENRY HILBOLDT.

(Endorsed:) Filed April 11th, 1883. J. A. Jones, clerk.

Complainant next offered in evidence a private law of the State of Illinois entitled "An act to amend an act entitled 'An act to incorporate the Cairo and St. Louis Railroad Company,' approved February 16, 1865," found on page 256, vol. 3, Private Laws of Illinois for 1869.

5.—*Amendment to charter of Cairo & St. Louis R. R. Co.*

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That the several towns, cities, and counties through or near which said railroad may pass, and the several townships in said counties which have adopted or may hereafter adopt township organization, may subscribe for and take stock in said company, or may make a donation in aid of the construction of said road, and may issue bonds in such sums as they may deem sufficient in payment of
105 such subscriptions to said stock or of such donations, said bonds
not to bear a greater rate of interest than ten per cent. per annum, payable either within the State or at some point without the same, and not to run longer than thirty years; and a tax of not more than one dollar on each one hundred dollars' worth of taxable property may be levied and collected in such town, city, county, or township per annum to pay the installments on such stock or donation, or to pay the interest and principal, or either, of bonds issued in payment for such stock or donation; and said towns, cities, counties, or townships may donate any swamp or overflowed lands, or the proceeds thereof, or any other disposable property, in aid of the construction of said road; provided, that no such subscription or donation shall be made, no such bonds shall be issued, and no such tax shall be levied unless a majority of the legal voters of said town, city, county, or township shall vote for the same, at an election to be held under the order of the corporate authorities in cases of towns and cities, and of the county court in cases of counties or supervisors of townships, as is now provided for by law or as may be hereafter provided for; and

106 provided further, that a majority of legal voters at any such election shall be held as a majority of the legal voters of any such township, town, city, or county; and that the questions of making a subscription or donation, of issuing bonds, and levying taxes may be submitted as one question or as separate questions at such election, and either or all of said questions may be submitted to an election at any time in the discretion of the parties authorized to call such election, thirty days' notice of such election to be given, as in cases of county elections.

§ 2. Whenever a petition shall be presented to the county, city, or town clerk of any county, city, or town, or supervisors of any township, through or near which said railroad may pass, signed by at least fifty legal voters of such county, city, town, or township, setting forth the amount of stock proposed to be taken in such railroad company, or donation to be made by any such county, city, town, or township, and specifying the time for holding the election, it shall be the duty of such county, city, or town clerk or supervisor of township to give thirty days' notice of the time of holding such election, which shall be the same time as that specified in such
107 petition; which said notice shall be given in the same manner, and such election or elections shall be conducted in the same mode, and held in the same places, provided for holding general election, in such counties, cities, towns, or townships, and the returns of such elections shall be made in same manner and within the same time, and shall be opened and declared in the same manner as for other elections held in such counties, cities, towns, or townships. If a majority of the votes cast at such election shall be for such subscription or for donation, it shall be the duty of the county court, the corporate authorities of such city or town, and supervisor and clerks of such township to subscribe, upon the request of said company, for stock in said company to the amount so voted for, and to issue and deliver to said company the same amount as the stock so subscribed or donation made of the bonds of such county, city, town, or township; provided, that at any election held under the provisions of this act at any other time than that for general elections, the registry of the legal voters at the last general election shall be a legal registry for the purposes of said special election under this act; and, provided further, that any legal
108 voters whose names do not appear on the register for said general election shall be allowed to vote, and his vote received and taken in the same manner and with like effect as unregistered legal voters' votes are now received and taken; provided, that all elections heretofore held in any county, city, or town in reference to a subscription to said railroad are hereby declared legal and binding, and the county court of any county and the corporate authorities of any city or town in which such elections have been already held, and a majority of the votes cast were for subscription, shall have authority to issue bonds for such an amount as was voted for, notwithstanding any insufficiency, informality, or irregularity in such election or in the notice thereof; and, provided, also, that said railroad company may lease its road, as the board of directors may determine.

§ 3. Whenever a petition shall be presented to the trustees of schools of any township in any of the counties through or near which said railroad may pass, in which said county the township organization has not been adopted, and which said petition shall be signed by at least fifty legal voters of said township, praying that an election may be ordered in said

township, in reference to a subscription or donation to said rail-
109 road, and setting forth the amount of stock proposed to be taken
in said railroad, or donation to be made to it by said township, and specifying the time for holding the election, it shall be the duty of such trustees, at any regular or special meeting, to order an election in accordance with the prayer of said petitioner. When the election shall have been so ordered, it shall be the duty of the school treasurer to give notice of the election in the same manner as notices are now given of the election of school trustees. Said notice shall contain the particulars prescribed in the preceding section of this act for elections under that section, and shall be given for thirty days before said election. Said election shall be held in such place in such township as the trustees of schools may direct; and at such election two of said trustees shall act as judges and one as clerk of said election. In case of the absence of such judges at the time appointed (for) the election, or their refusal to act, the voters assembled shall choose two judges and one clerk from among the by-standers. At the close of the election, the judges and clerk shall count the votes given and make return
as in elections for school trustees. If a majority of the votes given
110 are for subscription or donation, it shall be the duty of said trustees,
in their corporate capacities, and school treasurer, and they are hereby authorized to issue bonds to said railroad company in the same manner and with like effect as is provided for in the previous section of this act for the payment of interest upon said bonds. The said trustees of schools shall certify to the county clerk the amount required to be paid, as is now done by the school directors for the school tax; and said amount so required shall be levied and assessed upon all the property, real and personal; in said township subject to taxation for general purposes, and shall be collected as the school tax is now collected, and paid over to the school treasurer, as is now done with the school tax; but said amount thus levied and collected shall be held and used for the payment of the interest upon said bonds, and for no other purpose whatever.

§ 4. This act shall be in force from and after its passage.

6. *Ordinance authorizing subscription to stock of C. & St. L. R. R. Co.*

Complainant next offered in evidence an ordinance passed and approved July 21, 1871, by the city council of the city of Jonesboro', as follows:

111 **_Ordinance No. 63._—AN ORDINANCE to authorize a subscription of $50,000 to the capital stock of the Cairo and St. Louis Railroad Company.**

Whereas at a regular meeting of the city council of the city of Jonesboro', in the county of Union and State of Illinois, held at their council rooms on the second day of March, A. D. 1868, the following resolution was adopted by said council, to wit:

Be it resolved by the city council of the city of Jonesboro', That the question of the city of Jonesboro' subscribing fifty thousand dollars to the capital stock of the Cairo and St. Louis Railroad Company, and the issuing of bonds therefor, payable within 20 years from date, at the option of said city, bearing interest at the rate of 8 per cent. per annum from date, conditioned that said railroad passes through the corporate limits of said city, with a depot at some convenient and suitable place therein to the acceptance of the city; that said railroad be completed from said Cairo to St. Louis within a reasonable length of time, be submitted to the legal voters of said city at the next regular election to be held on the 6th day of April, A. D. 1868, and that the clerk give the legal notice.

112 And whereas, in pursuance of said resolution, an election was held on the 6th day of April, A. D. 1868, in the several wards of said city at the usual voting places therein, when and where the legal voters of said city voted upon the question submitted in accordance with said resolution, and that due legal notice of said election was given by the city clerk of said city; and whereas by a return from the several wards of said city it appears that one hundred and thirty-one (131) votes were given in favor of such subscription and none (0) were given against subscription:

SECTION 1st. Now, therefore, for the purpose of giving effect to the wishes of the voters of said city, be it enacted by the city of Jonesboro', that a subscription of fifty thousand dollars to the capital stock of the Cairo and St. Louis Railroad Company be, and the same is hereby, made upon the conditions specified in said resolutions.

113 SECTION 2d. Be it further enacted, That for the purpose of paying such subscription there shall be issued bonds in the sums one thousand dollars each to the aggregate amount of fifty thousand dollars, numbered from one to fifty, inclusive, payable within twenty years from date, with interest at eight per cent. per annum, and the city clerk shall cause the said bonds to be prepared and shall deliver the same to John E. Naill, who is hereby appointed agent on behalf of the city to receive from the clerk the said bonds and to deliver the same to the said company, its authorized agent or officer, upon compliance by the said company with the conditions in said resolutions specified, and at the same time to receive from the said company its certificate or certificates of stock (paid up) in said company to an amount equal to *to* the amount of the bonds so delivered, and that he immediately deliver such certificate or certificates to the city council; said bonds prior to their delivery by the said John E. Naill to the said company shall be cancelled, and the coupons due or so many as to amount to the amount of interest accumulated shall be returned to the city council or any fractional part cancelled on the coupon or coupons.

Passed and approved July 21st, A. D. 1871.

PAUL FRICK, *Mayor.*

Attest:
JOHN GREAR,
City Clerk.

STATE OF ILLINOIS,
Union County, City of Jonesboro', ss:

114 I, J. Henry Hilboldt, clerk of the city of Jonesboro', do hereby certify that the foregoing is a true and correct copy of an ordinance, No. 63, passed and approved by the city council on 21st day of July, A. D. 1871.

In witness whereof I have hereunto set my hand and seal this 26th day of February, A. D. 1883.

[L. S.] J. HENRY HILBOLDT, *Clerk.*

(Endorsed:) Filed April 11th, 1883. J. A. Jones, clerk.

Complainant next offered in evidence a certificate of auditor of State of Illinois to county clerk of Union County, showing amount rate of tax levy.

7.—*Certificate of State auditor of rate of tax levy.*

STATE OF ILLINOIS, AUDITOR'S OFFICE,
Springfield, October 18th, 1881.

To the county clerk of Union County, Illinois:

In pursuance of law I, Charles P. Swigert, auditor of public accounts of the State of Illinois, hereby certify that as estimated and determined by me, the rate per centum of tax necessary to be levied on the total
115 valuation of property for the year 1881, in city of Jonesboro', for the purpose of paying interest on bonds issued by said city and registered in this office, together with the ordinary costs of collecting and disbursing the same, as estimated by the auditor and treasurer, is seventeen and six-tenths mills on each one dollar valuation of property.

I hereby certify said rate to you as county clerk, and notify you to extend the same against the valuation of all property in said city for the year 1881, as equalized or assessed by the State board of equalization; said rate being equal to one dollar and seventy-six cents on each one hundred dollars of such equalized or assessed valuation.

In testimony whereof I hereunto subscribe my name and affix the seal of my office the day and year first above written.

[L. S.] CHAS. P. SWIGERT,
Auditor, P. A.

(Endorsed:) Filed April 11th, 1883. J. A. Jones, clerk.

116 Complainant next offered a record of a suit between the Cairo & St. Louis Railroad Company and the City of Jonesboro' in the circuit court of Alexander County, Ill's, which, by agreement, is omitted from the record.

8.—*Testimony of Sidney Grear.*

SIDNEY GREAR, being sworn as a witness on part of complainant, testified as follows:

I live in Jonesboro', in the county of Union, and State of Illinois, which city is the complainant in this suit; I was clerk of said city during its litigation with the Cairo & St. Louis Railroad Company; in a mandamus proceeding to compel a second issue of the bonds was a witness for the railroad company, and am familiar with the city records. Have lived in Jonesboro' all my life, and know something of the facts of the voting for and issuance of bonds. After the vote of the people in 1868 nothing was done by the Cairo & St. Louis Railroad Company or city until July, 1871, at which time the company let a contract for building a road of 4

ft. 8½ inches gauge. This was the kind of road contemplated by the people when the vote was had; a narrow-gauge road had then never been heard of in that city. On the 21st day of July, 1871, the ordi-
117 nance of subscription was passed, and after that the gauge of the railroad was cut down to three feet, which caused great dissatisfaction. In 1872 one-half of the bonds voted were prepared, dated July 2d, 1872, and placed in the hands of John E. Naill, who kept them for some time, and in the fall of 1874 (September), the railroad company got possession of them in some way which is unknown to me. There was nothing left of record in said city to show the kind of bond issued, nor the date of delivery, nor anything which would inform the city of the nature of said bonds, except the resolutions and ordinance now in evidence before the court. At the time the bonds went into the hands of the railroad company the officers whose signatures now appear upon the bonds had gone out of office. The railroad company attempted to enforce the issue of the second half of bonds and the litigation was protracted until some time in 1879, when the appeal from the decision of the circuit court in the city's favor was abandoned by the railroad company. Propositions of compromise have since been made to said city by parties purporting to represent the bondholders.

118 The defendants, to maintain the issues upon their part, offer in evidence a stipulation of facts now on file, and the same bond offered by complainant and the private acts offered by complainant, entitled as follows: 1st. "An act to incorporate the inhabitants of Jonesboro'," approved and in force Jan. 28, 1857. 2d. "An act to amend an act entitled 'An act to incorporate the Cairo and St. Louis Railroad Company,' approved February 16, 1865."

The defendant then offered in evidence a certificate of registration of said bonds by the auditor of the State of Illinois, as follows:

9.—*State auditor's certificate of registration of bonds.*

AUDITOR'S OFFICE, ILLINOIS,
Springfield, Oct. 13, 1874.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, township, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of my office, the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor P. A.

119 The foregoing evidence was produced upon the hearing of said cause.

DAY & GREAR,
Sol. for Compl't.
GEO. A. SANDERS,
Sol. for Def't Graves.
S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed June 8, 1883. J. A. Jones, clerk.

And on the day last aforesaid, to wit, June 8th, 1883, came the complainant by its solicitors and filed its appeal bond in said cause, together with a certified copy of a resolution passed by the city council of Jonesboro', thereto attached, which bond with said resolution attached thereto are in the words and figures following, to wit:

Appeal bond.

Know all men by these presents that the City of Jonesboro', in the county of Union, and State of Illinois, is held and firmly bound unto The Cairo and St. Louis Railroad Company, and Charles P. Swigert,
120 William S. Hanners, Henry Rendleman, Luther R. Graves, and The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which the said city hereby binds itself. Signed and sealed with the official seal of said city this sixth day of June, A. D. 1883.

The condition of the above obligation is such that whereas the circuit court of the United States of America for the southern district of the State of Illinois, at the January term of said court, to wit, on the 11th day of April, 1882, rendered a decree against the said City of Jonesboro' dismissing a certain bill filed by said city for an injunction, and dissolving a temporary injunction theretofore granted therein in a certain cause, wherein the said city was complainant and the said Cairo and St. Louis Railroad Company, and Charles P. Swigert, William S. Hanners, Henry Rendleman, Luther R. Graves, and The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company
121 were defendants, and for costs of said suit, from which decree the said City of Jonesboro' has prayed for and obtained an appeal to the Supreme Court of the United States:

Now, if the said City of Jonesboro' shall prosecute said appeal to effect and shall, moreover, pay the amount of the said decree, costs, and damages rendered and to be rendered against it the said City of Jonesboro' in case the said decree shall be affirmed in the said Supreme Court, then this obligation to be void; otherwise to remain in full force and effect.

In testimony whereof said city has caused these presents to be sealed with its seal, and to be signed by the mayor of said city, who is duly authorized by resolution—a certified copy of which is hereto attached—to sign said bond, and caused it to be countersigned by the clerk, this sixth day of June, A. D. 1883.

[L. S.]

THE CITY OF JONESBORO',
By JOHN GREAR, *Mayor*.
WILLIAM S. DAY.

Attest:
JAMES LINGLE, *City Clerk*.

RESOLUTION.

JUNE 6TH, 1883.

122 Call meeting of council at council rooms. Present: His honor Mayor Grear, Ald. Anderson, Carter, Fullenwider, Frick, Jones, and Stoun. The following resolution was submitted, and, by a unanimous vote, was passed:

Whereas in a certain proceeding lately pending in the circuit court of the United States for the southern district of the State of Illinois, wherein The City of Jonesboro' was complainant and The Cairo and St. Louis Railroad Company, Charles P. Swigert, William S. Hanners, Luther R. Graves, and The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company, were defendants, to wit, at the January term of said court, 1883, a decree was entered dismissing said complainant's bill and judgment against complainant for costs:

Now, be it resolved by said city of Jonesboro', That said suit be appealed to the Supreme Court of the United States, and that the mayor of said city be, and he is hereby authorized to execute in the name of said city the necessary bond to perfect said appeal, and to file same, duly countersigned by the clerk of said city, with a certified copy of this resolution.

123 STATE OF ILLINOIS,
Union County, City of Jonesboro', ss:

I, James Lingle, clerk of the city of Jonesboro', do hereby certify that the foregoing is correct copy of a resolution passed by the city council of said city of Jonesboro' on the sixth day of June, 1883, as the same appears of record in my office. I further certify that I am the keeper of the records of said city.

Witness my hand and the seal of said city this sixth day of June, A. D. 1883.

[L. S.] JAMES LINGLE, *Clerk.*

Approved June 8th, 1883.

S. H. TREAT,
Dist. Judge.

(Endorsed:) Filed June 8, 1883. J. A. Jones, clerk.

124 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of Illinois, ss:

In the United States circuit court.

I, John A. Jones, clerk of the circuit court of the United States in and for said southern district of Illinois, do hereby certify that the foregoing is a true, perfect, and complete transcript of all the papers filed and the proceedings thereon had in a certain cause lately pending in said court wherein The City of Jonesboro' (Illinois) was complainant and The Cairo and St. Louis Railroad Company, Charles P. Swigert, Auditor of the State of Illinois, William S. Hanners, Clerk of Union County, Illinois, Henry Rendleman, Sheriff of said County, The Unknown Holders of the Jonesboro' City bonds issued in aid of the Cairo and St. Louis Railroad Company, and Luther R. Graves were defendants, as fully as the same appear on file and of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in the city of Springfield, in said district, this

20th day of August in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the one hundred and eighth year.

[SEAL.] J. A. JONES, *Clerk.*

(Indorsement on cover:) No. 1049. The City of Jonesboro', appellant, vs. The Cairo and St. Louis Railroad Company et al. S. Illinois C. C. U. S. Filed 8th October, 1883.

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110-192

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

NO. 1049.

THE CITY OF JONESBORO, APPELLANT,

vs.

THE CAIRO AND ST. LOUIS RAILWAY COMPANY
ET AL., APPELLEES.

APPEAL FROM SOUTHERN DISTRICT OF ILLINOIS.

ABSTRACT OF RECORD TO ACCOMPANY APPELLANT'S FIRST ARGUMENT.

W. S. DAY,
ATTORNEY FOR APPELLANT.

ANNA, ILLINOIS,
"THE FARMER AND FRUIT GROWER" STEAM PRINT,
1883.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

NO. 1049.

THE CITY OF JONESBORO, APPELLANT,

vs.

THE CAIRO AND ST. LOUIS RAILWAY COMPANY
ET AL., APPELLEES.

APPEAL FROM SOUTHERN DISTRICT OF ILLINOIS.

BRIEF OF RECORD AND ARGUMENT. 17804

This record shows—Bill filed in the Circuit Court of **Pages 1 to 8.** Union County, Illinois, at the September term, 1882, by the City of Jonesboro against the Cairo and St. Louis Railroad

Company; the Auditor of State of Illinois, and the County Clerk and Sheriff of Union County, and the unknown holders of the Jonesboro City bonds issued in aid of the Cairo and St. Louis Railroad Company—and asks that said Bonds may be canceled and the officers enjoined from certifying, extending and levying taxes to pay said bonds and interest.

Pages 10 to 13 The usual writs were issued and service obtained, except as to the unknown holders of said bonds, who were served by publication, and at the September term of said Court a default was had and a decree rendered granting the relief sought.

Page 14 Luther R. Graves, one of the holders of the bonds, upon petition was made a defendant.

Page 16 Upon petition of Luther R. Graves, the cause is removed to the Circuit Court of the United States for the Page 30 Southern District of Illinois, where, upon trial, the bill was dismissed, and the injunction dissolved by the Court, from which judgment this case is appealed to this Court.

The bill alleges that the bonds in question were issued without authority, and asks that they be canceled for that reason.

Pages 22 to 26 The answer of Luther R. Graves traverses the allegations in bill, and relies on his being an innocent purchaser for value.

Evidence offered to sustain bill, and for defendant in the following order: **Pages 31 to 45**

1. Copy of bond, with certificate of registration. **Page 32**

2. Charter of City of Jonesboro, offered to show want of power to subscribe for Railroad stock. The power nowhere appears therein. **Page 32**

3. Charter of Cairo and St. Louis Railroad Company—by special act of the Legislature, February 16, 1865, to show absence of any power. **Page 38**

4. Resolution of City of Jonesboro, submitting question of subscription to vote. **Page 39**

5. Amendment to Charter of Cairo and St. Louis Railroad Company. This is the only law purporting to give any power to the City of Jonesboro to subscribe to the capital stock of the Railroad Company, and we make the following points: **Page 40**

The act amending the Charter of the Cairo and St. Louis Railroad Company was passed and in force April, 1869, and attempts to validate an election held by the City of Jonesboro in 1868.

We think this law is unconstitutional so far as it attempts to validate said election.

That so far as it authorized the City to make a subscription without a vote of the people, it simply conferred a power which, if not exercised before the Constitution of

1870 went into force, was taken away by that Constitution.

Page 42 6. Ordinance of City of Jonesboro, attempting to subscribe for capital stock, July 21, 1871, offered to show at what time subscription was made, after all power of subscription was taken away by Constitution of 1870.

Page 44 7. Certificate of Auditor as to levy.

8. Evidence of Sidney Grear, which shows there was no subscription until 1871.

Laws offered in evidence and relied on :

PRIVATE LAWS, ILLINOIS, 1857.

Pages 74 to 81.

In force Jan. 28, 1857. AN ACT *to incorporate the inhabitants of Jonesboro.*

Article 1, with four sections, gives style of incorporation, boundaries and power of City Council to enlarge same, and names of trustees.

Article 2, with twenty-four sections, gives powers of the City Council.

Section 14, of Article 2, contains the powers of the Council to borrow money, and is as follows :

"They shall have power to appoint a clerk and all other officers not made elective by this act, which shall be necessary, and the officers thereof created by ordinance of the board ; they shall have the power to require and approve bonds of all officers appointed in pursuance of this charter with penalties and security for the faithful performance of their respective duties; *to borrow money, on the credit of the city, and issue their bonds under the seal of the city therefor, but no money shall be borrowed on the credit of the city, except with the consent of two-thirds of the qualified voters of the city;* they shall have power to appropriate money, pay debts, and provide for the general welfare of the city; to establish hospitals, and make regulations for the government of the same, and to secure the general health of the inhabitants; and declare what shall be a nuisance, and prevent and remove the same."

Section 44, of Article 2, is as follows:

"This act is hereby declared *a public act*, and shall be taken in evidence in all courts of law and equity within the State without further proof, and shall take effect and be in force from and after its passage.

"APPROVED JANUARY 28, 1857."

Resolutions and ordinances of the City of Jonesboro, in relation to this case, referred to in the recitals on the bonds and used in evidence.

RESOLUTION:

"*Be it resolved by the City Council of the City of Jonesboro,* That the question of the City of Jonesboro subscribing fifty thousand dollars to the capital stock of the Cairo and St. Louis Railroad Company and issuing bonds therefor, payable within twenty years from date, at the option of the said city, bearing interest at the rate of 8 per cent. per annum from date of issue, conditioned that said railroad passes through the corporate limits of said city, with a depot therein at some suitable and convenient place to the acceptance of the City Council; that said railroad be completed from Cairo to St. Louis within a reasonable time, be submitted to the legal voters of said city at the next regular election to be held on the 6th day of April, 1868, and that the Clerk give the legal notices."

"*And be it furthnr resolved*, that if a majority of all the legal votes cast at said election be for subscribing $50,000 stock, then, in that case, when said railroad shall be graded ready for laying the rails from either of the extreme ends through the city of Jonesboro, then one-half of said bonds shall be issued, and the other half when the cars are running through from Cairo to St. Louis. Said bonds, when issued, shall be of the denominations not exceeding $5,000 each, and shall be signed by the Mayor, attested by the City Clerk under the seal of said city, and countersigned and registered by the City Treasurer.

Passed and approved, March 2, 1868.

"Attest: PAUL FRICK,

"J. H. SAMSON, *City Clerk.* *Mayor.*

"ORDINANCE No. 63.

"AN ORDINANCE *to authorize a subscription of $50,000 to the capital stock of the Cairo and St. Louis Railroad Company.*

"WHEREAS, At a regular meeting of the City Council of the City of Jonesboro, in the County of Union, and State of Illinois, held at their council room on the 2d day of March, A. D. 1868, the following resolution was adopted by said council, to-wit:

"'*Be it resolved by the City Council of the City of Jonesboro,* That the question of the City of Jonesboro subscribing fifty thousand dollars to the capital stock of the Cairo and St. Louis Railroad Company, and the issuing of bonds therefor payable within twenty years from date, at option of said city, bearing interest at the rate of 8 per cent. per annum from date; conditioned that said railroad passes through the corporate limits of said city, with a depot at some convenient and suitable place therein, to the acceptance of the city; that said railroad be completed from Cairo to St. Louis within a reasonable length of time, be submitted to the legal voters of said city at the next regular election, to be held on the 6th day of April, A. D. 1868, and that the clerk give the legal notice; and;

"WHEREAS, In pursuance of said resolution, an election was held on the 6th day of April, A. D. 1868, in the several wards of said city, at the usual voting places therein, when and where the legal voters of said city voted upon the question submitted in accordance with said resolution, and that due legal notice of said election was given by the City clerk of said city, and,

"WHEREAS, By a return from the several wards of said city it appears that one hundred and thirty-one (131) votes were given in favor of such subscription, and none (0) were given against subscription.

"Section 1. Now, therefore, for the purpose of giving effect to the wishes of the voters of said city, be it enacted by the City of Jonesboro that a subscription of fifty thousand dollars to the capital stock of the Cairo and St. Louis Railroad Company be, and the same is hereby made upon the conditions specified in said resolution.

"Section 2. Be it further enacted, that for the purpose of paying such subscription, there shall be issued bonds in the sums of one thousand dollars each, to the aggregate amount of fifty thousand dollars, numbered from one to fifty, inclusive, payable within twenty years from date, with interest at eight per cent. per annum, and the City Clerk shall cause the said bonds to be prepared, and shall deliver the same to John E. Nail, who is hereby appointed agent on behalf of the city to receive from the clerk the said bonds, and to deliver the same to the said company, its authorized agent or officer, upon compliance by the said company with the conditions in said resolution specified, and at the same time to receive from the said company its certificate or certificates of stock (paid up) in said company, to an amount equal to the amount of bonds so delivered, and that he immediately deliver such certificate or certificates to the City Council. Said bonds, prior to their delivery by said John E. Nail to the said company, shall be canceled, and the coupons due, or so many as to amount to the amount of interest accumulated, shall be returned to the City Council, or any fractional part canceled on the coupon or coupons.

"Passed and approved July 21, 1871.

[Attest] PAUL FRICK,
JOHN GREAR, *City Clerk.* *Mayor.*

PRIVATE LAWS OF ILLINOIS, VOL. 2, 1865, PAGE 135.

AN ACT *to incorporate the Cairo and St. Louis Railroad Company.*

In force Feb. 16, 1865.

Corporators.

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly*, That Sharon Tyndale, Isham N. Haynie, Samuel Staats Taylor, John Thomas, Wm. H. Logan, Wm. P. Halliday, and Tilman B. Cantrell, and their associates, successors and assigns, be and they are hereby created a bodily politic and corporate, under the name and style of "The Cairo and St. Louis Railroad Company," and by that name be and they are hereby made capable, in law and equity, to sue and be sued, plead and be impleaded, defend and be defended, in any court of law or equity in this State or elsewhere; to make, have and use a common seal, and the same to renew and alter at pleasure,

Name and style.

Powers.

and shall be and hereby are, vested with all powers, privileges and immunities, which are or may be necessary to construct, complete and operate a railroad with double or single track, from the City of Cairo to any point opposite the City of St. Louis, in the State of Missouri; and for that purpose, to enter upon and take possession of, so much land as may be necessary to construct, complete and operate said railroad and its appendages; and if said company cannot agree with the owner or owners of said land taken as aforesaid, it may be lawful for them to proceed in the manner now provided by laws of this State, for the condemnation of lands by incorporated companies, and may exercise also for said purpose, all such powers as have been heretofore, or may be hereafter, conferred upon any other railroad company incorporated by the laws of this State.

Capital stock

§ 2. The capital stock of said company shall be three millions of dollars, which may be increased by said company to any sum not exceeding five millions of dollars; which may be divided into shares of one hundred dollars each, which shall be deemed personal property, and may be issued and transferred in such manner as the board of directors may prescribe.

Directors

§ 3. The affairs of said company shall be managed by a board of seven directors, which may be increased to any number not exceeding thirteen; and Sharon Tyndale, Isham N. Haynie, Samuel Staats Taylor, John Thomas, Wm. H.

Logan, Wm. P. Halliday, and Tilman B. Cantrell, are hereby appointed the first board, who shall hold their offices until their successors are elected and qualified, in such manner as may be prescribed by the by-laws of said company. Said board shall have the power of electing one of their number president, and such other officers as may be prescribed by the by-laws; and said corporation shall be and is hereby vested with all the powers conferred upon railroad incorporations by the general railroad laws of the State of Illinois, or any amendment now made or hereafter to be made thereto. **First board**

Junction with roads

§ 4. Said corporation shall have power to unite its railroad with any other railroad now constructed, or which shall hereafter be constructed, upon such terms as may be mutually agreed upon between the companies so connecting; and from time to time to borrow such sums of money as may be necessary for the purposes of said company, and at any rate of interest not exceeding ten per cent. per annum; and to issue and dispose of their bonds in denominations of not less than one hundred dollars for any amount so borrowed; and to mortgage their corporate property, real or personal, and their franchise, or convey the same by deed of trust to secure the payment of any money so borrowed, or any other debt of said company.

Restrictions.

§ 5. Nothing contained in this act, or in any law of this State, shall authorize said company to take for the uses and purposes of the company or otherwise, or to impair any portion of the levees or embankments already constructed and erected around the City of Cairo, or to be constructed and erected by the trustees of the Cairo city property, or by any person or corporation under existing agreements with them, except by the consent of said trustees and of the City of Cairo.

Restrictions

§ 6. This act shall be a public act, and shall take effect and be in force from and after its passage.

APPROVED, February 16, 1865.

PRIVATE LAWS—STATE OF ILLINOIS.

Vol. 3, 1869; Pages 256, 257, 258.

In force April 15, 1869.

AN ACT *to amend an act entitled "An act to incorporate the Cairo and St. Louis Railroad Company," approved February* 16, 1865.

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That the several towns, cities and counties through, or near which said railroad may pass, and the several townships in said counties which have adopted or may hereafter adopt township organization, may subscribe for and take stock in said company, or may make a donation in aid of the construction of said road, and may issue bonds, in such sums as they may deem sufficient, in payment of such subscriptions to said stock or

Organized towns may take stock.

of such donations, said bonds not to bear a greater rate of interest than ten per cent. per annum, payable either within the State or at some point without the same, and not to run longer than thirty years, and a tax of not more than one dollar on each hundred dollars worth of taxable property may be levied and collected in such town, city, county or township, per annum, to pay the installments on such stock or donation, or to pay the interest and principal, or either, of bonds issued in payment for such stock or donation; and said towns, cities, counties or townships may donate any swamp or overflowed lands, or the proceeds thereof, or any other disposable property, in aid of the construction of said road: *Provided*, That no such subscription or donation shall be made, no such bonds shall be issued, and no such tax shall be levied, unless a majority of the legal voters of said town, city, county or township shall vote for the same, at an election to be held under the order of the corporate authorities in cases of towns and cities, and of county court in cases of counties, or supervisors of townships, as is now provided for by law, or as may be hereafter provided for: *And, provided, further*, That a majority of legal voters at any such election shall be held as a majority of the legal voters of any such township, town, city or county, and that the question of making a subscription or donation, of issuing bonds and levying taxes, may be submitted as one question, or as separate questions, at such election, and either or all of said questions may be submitted to an election, at any time,

Levy and collect taxes

Submitted to legal voters

in the discretion of the parties authorized to call such election; thirty days' notice of such election to be given, as in cases of county elections.

Stock subscriptions

Petition for an election

Notice of elections

Who may subscribe stock.

§ 2. Whenever a petition shall be presented to the County, City, or Town Clerk of any county, city or town, or supervisors of any township, through or near which said railroad may pass, signed by at least fifty legal voters of such county, city, towns or township, setting forth the amount of stock proposed to be taken in such Railroad Company, or donation to be made by any such county, city, town or township, and specifying the time for holding the election, it shall be the duty of such County, City or Town Clerk, or supervisor of township, to give thirty days' notice of the time of holding such election, which shall be the same time as that specified in such petition; which said notice shall be given in the same manner, and such election or elections shall be conducted in the same mode and held in the same places provided for holding general elections in such counties, cities, towns or townships, and the returns of such elections shall be made in the same manner and within the same time, and shall be opened and declared in the same manner as for other elections held in such counties, cities, towns or townships. If a majority of the votes cast at such election shall be for such subscription or for donation, it shall be the duty of the County Court, the corporate authorities of such city or town, and supervisors and clerks of such township to subscribe, upon the request of said company, for stock in said company to the amount so voted for, and to issue and deliver to said company the same amount as the stock so subscribed or donation made of the bonds of such county, city, town or township: *Provided*, That at any election held under the provisions of this act, at any other time than that for general elections, the registry of the legal voters at the last general election shall be a legal registry for the purposes of said special election under this act: *And, provided, further*, That any legal voters whose names do not appear on the register for said general election, shall be allowed to vote, and his vote received and taken in same manner and with like effect as unregistered legal voters' votes are now received and taken: *Provided*, That all elections heretofore held in any county, city or town, in reference to a subscription to said railroad, are hereby declared legal and binding, and the County Court of any county and the corporate authorities of any city or town in which such elections have been already held, and a majority of the votes cast were for subscription, shall have authority to issue bonds for such an amount as was voted for, notwithstanding any insufficiency, or informality, or irregularity in such election, or in the notice thereof: *And, provided, also*, That said railroad company may lease its road, as the Board of Directors may determine.

Registration of voters

Issue bonds

Petition to the school trustees for an election

§ 3. Whenever a petition shall be presented to the trustees of schools of any township in any of the counties, through or near which said railroad may pass, in which

School treasurer to give notice

Judges of election

said county the township organization has not been adopted, and which said petition shall be signed by at least fifty legal voters of said township, praying that an election may be ordered in said township, in reference to a subscription, or donation to said railroad, and setting forth the amount or donation to said railroad, and setting forth the amount of stock proposed to be taken in said railroad, or donation of stock proposed to be taken in said railroad, or donation to be made to such township, and specifying the time for holding the election, it shall be the duty of such trustees, at any regular or special meeting, to order an election in accordance with the prayer of said petitioner. When the election shall have been so ordered, it shall be the duty of the school treasurer to give notice of the election in the same manner as notices are now given of the election of school trustees. Said notice shall contain the particulars prescribed in the preceding section of this act for elections under that section, and shall be given for thirty days before said election. Said election shall be held in such place in such township as the trustees of schools may direct; and at such election two of said trustees shall act as judges and one as clerk of said election. In case of absence of such judges at the appointed time [for] the election, or their refusal to act, the voters assembled shall choose two judges and one clerk from among the bystanders. At the close of the election the judges and clerks shall count the votes given, and make return as in elections for school trustees. If a majority of the votes given are for subscription or donation, it shall be the duty of said trustees, in their corporate capacities, and school treasurer, and they are hereby authorized to issue bonds to said railroad company, in the same manner and with like effect as is provided for in the previous section of this act for the payment of interest upon said bonds. The said trustees of schools shall certify to the County Clerk the amount required to be paid, as is now done by the school directors for school tax; and said amount, so required, shall be levied and assessed upon the property, real and personal, in said township, subject to taxation for general purposes, and shall be collected as the school tax, as is now done with the school tax; but said amount, thus levied and collected, shall be held and used for payment of the interest upon said bonds, and for no other purpose whatever.

School rectors may assess tax.

§ 4. This act shall be in force from and after its passage.

SECTION 23, ARTICLE III. OF CONSTITUTION OF 1848.

Every bill shall be read on three different days, in each house, unless in case of urgency three-fourths of the houses where such bill is so depending, shall deem it expedient to dispense with this rule, and every bill having passed both houses shall be signed by the speakers of their respective houses; and no private or local law which may be passed by the General Assembly shall embrace more than one subject, and that shall be expressed in the title. And no public act of the General Assembly shall take effect or be in force until the expiration of 60 days from the end of the session at which the same may be passed, unless, in case of emergency, the General Assembly shall otherwise direct.

Separate Section of the Constitution of Illinois in force July 2nd, 1870.

MUNICIPAL SUBSCRIPTIONS TO RAILROAD OR PRIVATE CORPORATIONS.

No county, city, town, township, or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation; provided, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized under existing laws by a vote of the people of such municipality prior to such adoption.

110-192

IN THE SUPREME COURT.

:o:

UNITED STATES OF AMERICA

:o:

TO THE OCTOBER TERM, 1883.

:o:

THE CITY OF JONESBORO Appellant. vs. THE CAIRO & ST. LOUIS RAILROAD COMPANY, *et als.* Appellees.	*Appeal from Southern District of Illinois.*

ARGUMENT FOR APPELLANT.

DAY & GREAR, ATTYS. FOR APPELLANT.

MURPHYSBORO, ILL.
JOHN W. GREAR, BOOK AND JOB PRINTER.
1883.

Stock
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Pages referred to are of printed record

UNITED STATES OF AMERICA

:o:

IN THE SUPREME COURT.

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TO THE OCTOBER TERM, 1883.

:o:

THE CITY OF JONESBORO Appellant. VS. THE CAIRO & ST. LOUIS RAILROAD COMPANY, *et als.* Appellees.	*Appeal from Southern District of Illinois.*

ARGUMENT FOR APPELLANT.

The complainant seeks to have canceled, bonds, to the amount of $25,000, issued by the City of Jonesboro in aid of the Cairo & St. Louis Railroad Company, and to enjoin the collection of interest upon said bonds. The bonds are in the following language:

"No............ $1,000.

CITY OF JONESBORO RAILROAD BOND.

Know all men by these presents, that the City "of Jonesboro, in the county of Union, and State of Illinois, "acknowledges itself indebted and bound unto the Cairo & "St. Louis Railroad Company, or bearer, in the sum of One "Thousand Dollars, which sum the city of Jonesboro promises "to pay to said Cairo & St. Louis Railroad Company or "bearer twenty years from the date hereof, at the National "Bank of Commerce, in the city of New York, with interest "at the rate of eight per centum per annum, payable annu-"ally at said bank on the first day of July in each year upon "presentation and surrender of the annexed coupons as they "severally become due.

This bond is issued under and by virtue of the charter "of said city and of ordinances passed in pursuance thereof in "payment of so much of the subscription by said city for fifty "shares of the capital stock of said Cairo & St. Louis Rail-"road company. The proposition to subscribe for said stock "having been first submitted as required by law to the quali-"fied voters of said city for their approval or rejection at a "special election regularly held for that purpose at the various "voting precincts or ward in and of said city on the 6th day "of April, A. D. 1868, and more than two-thirds of said voters "having at said election assented thereto, and said majority of "voters also being a majority over all the votes cast at the "last preceding regular election held in and for said city, and "said Cairo & St. Louis Lailroad company having duly per- "formed all the conditions of said subscription to be performed "on its part before said bond was to be issued.

In testimony whereof said city has caused these "presents to be sealed with its seal and to be signed by its "mayor and countersigned by its treasurer and clerk this first "day of July, A. D. 1872.

[SEAL] PAUL FRICK, Mayor.
Countersigned:
A. POLK JONES, Treasurer.
JOHN GREAR, Clerk.

The objection to the bonds is a want of power to issue them. In the argument of the cause we will pursue the same course of investigation likely to be pursued by a prudent purchaser of such securities.

The bonds recite that they were issued in aid of a railroad company. This recital concludes both bondholder and municipality. They further recite that tney "were issued "*under and by virtue of the charter of the city of Jonesboro* "*and ordinances passed in pursuance thereof.*" This recital ought also to be conclusive upon the parties. By reference to the charter it will be seen that no such power was given therein. See an act entitled "*An Act to Incorporate the Inhabitants* "*of Jonesboro,*" p. 74 Private Laws of Ill. 1857, which is fnlly set out on pp. 32 to 38 of record. Sections 13 to 20 of said act contain a specific enumeration of the powers of said city. The only power under which any claim of authority to issue bonds could be made is found in section 14 and is a power "*to borrow money on the credit of the city and issue* "*bonds therefor.*" This does not authorize the city to subscribe to the capital stock of a railroad company nor can such authority be found in the charter. This charter is a private law creating the city of Jonesboro and specially defining what its powers should be; the enumeration of the powers there given it is the exclusion of all powers not enumerated. "*Enumeratio unius est exclusio alterius.*"

We recognize that the charter of the city might be changed by general or special law subsequently passed, and we pursue our investigation for the purpose of ascertaining whether such change has been made.

The Cairo & St. Louis Railroad Company was not organized under general law but was incorporated by special law entitled "*An Act to Incorporate the Cairo & St. Louis Railroad Company,*" approved Feb. 16th, 1865, and found on p. 135 Vol. 2, Private Laws of Illinois 1865; which act is set out fully on pages 38 and 39 of the record. It will not be contended that this act gave any power to issue the bonds, or that the charter of the city of Jonesboro was specially amended.

In 1868 a vote was had by the people of the city in favor of subscribing as recited in the bonds; and afterwards on the 3rd day of March, 1869, the legislature passed what is known as a curative act. When the bonds were delivered (Sept. 1874) the Mayor of the city filed in the office of the Auditor of the State of Illinois, a certificate stating that they were issued under this act of 1869; and it is upon this act that their validity mainly depends. It is entitled "*An Act to Amend an Act entitled an Act to Incorporate the Cairo & St. Louis Railroad Company, approved Feb. 16, 1865*," and is found on p. 256, Vol. 3, Private Laws of Illinois 1869 and is fully set forth on pages 40 to 42 of the record. This act of 1869 authorizes cities and counties along the line of the Cairo & St. Louis Railroad to subscribe to the capital stock of the company; it then authorizes the levy and collection of taxes, and the submission of the question of subscription to the legal voters of the municipality and points out the mode of conducting such election; after which is the following proviso: "All elections heretofore held in any county, city or "town, in reference to a subscription to said railroad are "hereby declared legal and binding, and the county court of "any county and the corporate authorities of any city or town "in which such elections have been already held and a majority of the votes cast were for subscription shall have authority to issue bonds for such an amount as was voted "for, notwithstanding any insufficiency, informality or irregularity in such election or in the notice thereof."

The first question which presents itself is whether this proviso validating unauthorized elections was constitutionally passed. *Section 23, Article III* of the Illinois State Constitution of 1848, in force at the time, provides that "No private or local law which may be passed by the general assembly shall embrace more than one subject and that shall be expressed in the title." The title of this act is "*An Act to Amend the charter of the Cairo & St. Louis Railroad Company ;*" and under that title it is sought to validate the unauthorized acts ot the city of Jonesboro. Under the title of "*An Act to Amend the charter of the Village of Lockport,*" the legislature attempted to validate certain orders unauthorizedly drawn by the authorities of said village. In *Village of Lockport vs. Gaylord*, 61 Ill. 276, it was held that this attempt was in violation of the section of the constitution above quoted. In passing upon the question the court say "The legalization of unauthorized acts of the corporation can not be considered to be amendatory of its charter" Much less can the legalization of unauthorized acts of the city of Jonesboro be considered amendatory of the charter of the Cairo & St. Louis Railroad Company. So that any attempt by this curative act to make a vote of 1868 binding upon the city of Jonesboro would be unconstitutional.

It would also be an attempt to create a debt against a municipality by act of the legislature which is forbidden by Section 5 Article IX of said constitution which provides that "The *corporate authorities* of * * * cities, &c., may be vested with power to assess and collect taxes, &c." This section has been construed to be a limitation upon the power of the legislature in this respect. *The People ex rel McCagg et al vs. Mayor &c of Chicago*, 51 Ill. 17. To create a debt which must be paid by taxing is equivalent to exercising the power of taxation. *Lovington vs. Wider et al*, 53 Ill. 302.

The only theory upon which this act can be held constitutional is that it validated no election nor created any debt, but simply authorized the corporate authorities to subscribe if they saw fit. This court has held (*St. Jo. T. vs. Rodgers*) that inasmuch as the legislature could authorize corporate authorities to subscribe without a vote of the people, it could authorize them to do so even though there had been a void election. In which case the power to subscribe rests alone upon legislative grant directly to the corporate authorities, and not upon a vote of the people.

This curative act was repealed by the new constitution of the State of Illinois, in force July 2nd, 1870, a separate section of which is as follows: "No county, city, town, township or other municipality shall ever become subscriber to "the capital stock of any railroad or private corporation, or "make donation to or loan its credit in aid of such corporation: "*Provided*, *however*, that the adoption of this acticle shall not "be construed as affecting the right of any such municipality "to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such "municipalities prior to such adoption." A law cannot be in force in the State, no matter when passed, which contravenes the provisions of the constitution of the State. *State ex rel City of Rockford vs. Maynard* 14th Ill. 421; *Hills vs. City of Chicago* 60th Ill. 86. The separate section of the new constitution above quoted took away all power to make subscriptions except when "authorized by a vote of the people under existing laws." The right of subscription under the curative act resting upon legislative grant directly to the corporate authorities, does not come within the saving clause of said section. In *County of Moultrie vs. Savings Bank* 92 U. S. p. 633, it is said by this court "It must be conceded "that had no subscription been made or engagement to subscribe entered into before the new constitution took effect, "none could have been made after." And in another part of the same opinion (p. 635) speaking of the cases of *Aspinwall vs Daviess* and *Town of Concord vs. Portsmouth Savings Bank* hereinafter cited, they say " We do not assert that the constitutional provision did not abrogate the authority to make a "subscription for railroad stock. On the contrary we think " it did."

By referring to p. 44 of the record it will be seen that no subscription nor agreement to subscribe, nor any contract whatever was entered into until the city by ordinance on the 21st of July, 1871, attempted to subscribe. (See *p.* 42 and 43 *of record*). This attempt was vain and the bonds issued under it are void. *Aspinwall vs. County of Daviess* 22 How. 364; *Town of Concord vs. Portsmouth Savings Bank*, 92 U. S. 625.

In view of a late decision of this court (*City of Ottawa vs. Carey, Oct. Term, 1882*) we make this further point: The bonds recite that they were issued "under and by virtue "of * * * certain ordinances of the city of Jonesboro." The ordinance of subscription (*p.* 42 *of record*) provides that the bonds were to be made payable *at the option* of the city *within* twenty years, and were to contain certain conditions therein set forth, which would have rendered them non-negotiable and made them subject to all defenses against the railroad company, to whom alone they were to be made payable, and not to "bearer." As to the right of the people to impose conditions and their effects see *The People ex rel vs. Caswell* 22 Ill. 147; *People vs. Dutcher* 56 Ill. 144; *People ex rel vs. Town of Hart* 67 Ill. 62; *Ibid, ex rel vs. Glann et al*, 70 Ill. 232; *Alley et al vs. Adams.* 76 Ill. 101; *People ex rel vs. Holden et al*, 91 Ill. 446.

Appellant respectfully submits that the bonds were not authorized by the charter under which they purport to have been issued ; nor by the act of 1869 under which the mayor certifies them to have been issued ; neither are they the bonds voted for by the people, as is disclosed by ordinance referred to in the recitals.

W. S. DAY,
SIDNEY GREAR, } Attys for Appellant.

110-192

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

NO. 1049.

THE CITY OF JONESBORO, APPELLANT,

vs.

THE CAIRO AND ST. LOUIS RAILWAY COMPANY ET AL.,
APPELLEES.

APPEAL FROM SOUTHERN DISTRICT OF ILLINOIS.

BRIEF AND ARGUMENT FOR APPELLEES.

GEORGE A. SANDERS,
ATTORNEY FOR LUTHER R. GRAVES, OF APPELLEES.

SPRINGFIELD, ILL.:
H. W. ROKKER, STATE PRINTER AND BINDER.
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The Laws relied on in this case, for convenience and at the suggestion of Justice Harlan, are published in full after Brief and Argument.

STATEMENT OF THE CASE.

The city of Jonesboro, Ills., was incorporated by an act of the Legislature of Illinois, in force January 28, 1857. Section 44 of the act declares the act to be a public act. (See laws relied on.)

On the 6th day of April, 1868, an election was held at which more than two-thirds of the voters of the city voted in favor of, and none against, a proposition to subscribe to the stock of the Cairo and St. Louis Railroad Company, and to issue bonds of the city in payment therefor, amounting to fifty thousand dollars.

There is no pretence but that this election was duly called, in accordance with the resolutions and notices of the city council, the corporate authorities for such purposes, and that the vote was fairly taken, in accordance with the laws of the city, and carried by more than two-thirds of the actual voters of the city,—131 votes being cast in favor of the proposition, and none against it.

On July 21, 1871, the city council passed a resolution to issue the $50,000 of bonds in payment of the $50,000 of stock subscribed to the Cairo and St. Louis Railroad Company, said bonds to be in denomination of $1,000 each, and numbered from one to fifty, payable within twenty years, and at 8 per cent. interest, in pursuance of the vote of April 6, 1868; and that John E. Nail should be the agent of the city to receive said bonds from the clerk of the city and deliver them to the railroad company when it had complied with the conditions precedent, contained in said resolution.

Twenty-five thousand of these bonds were so issued and delivered by the said agent, John E. Nail, to the railroad company, on fulfillment of the conditions precedent. These $25,000 of bonds were duly registered by the State Auditor, September 28, 1874, on the sworn statement of John Gear as Mayor of the city of Jonesboro; that all conditions precedent had been lawfully executed, and that these, the bonds, were subject to registration.

These bonds were issued July 1, 1872, and interest regularly paid on them up to July 1, 1882, or for ten years.

Luther R. Graves, the holder of the bonds in controversy, $16,000, including three bonds belonging to his children, purchased these bonds in the ordinary course of business in New York city, on or about November 10, 1880, and paid a premium therefor, without any notice of any defect or want of power to issue them, as he swears in the pleadings.

In September, 1882, the city of Jonesboro, Ill., by bill in chancery, enjoined the collection of taxes for payment of interest on these bonds, and prayed that they be declared void in the Circuit Court of Union county, Illinois.

The defendant in error, Luther R. Graves, the only party interested, and holder of sixteen bonds of the city of Jonesboro, appeared through his counsel and removed the case to the United States Circuit Court for the Southern District of Illinois.

On a full hearing of the case in the Federal Court in April, 1883, the court ordered and decreed that complainant's bill be dismissed, with costs, and that the injunction granted by the State Court be dissolved, and that an appeal from that decree be allowed to the Supreme Court of the United States, not to operate as a *supersedias*, on filing bond for five hundred dollars within sixty days.

BRIEF.

These bonds are valid under the powers embraced in the charter to the city of Jonesboro.

The city of Jonesboro had ample power to issue bonds under its charter for corporate purposes. And bonds so issued by a municipality in aid of railroads have been held to be issued for a corporate purpose by the Supreme Court of Illinois, and by the Supreme Court of the United States.

The Chicago, Danville and V. R. R. Co. v. *Smith*, 62 Ill. 268.

Taylor v. *Thompson*, 42 Ill. 9.

Prettyman v. *The Supervisors of Tazewell Co.*, 19 Ill. 406.

Johnson v. *The County of Stark*, *supra.*

Perkins v. *Lewis*, 24 Ill. 208.

Butler v. *Dunham*, 27 Ill. 474.

The President and Trustees v. *Frick*, 34 Ill. 405.

County of Livingston v. *Darlington*, 101 U. S. 411.

Harter v. *Kernochan*, 103 U. S. 562.

The charter of incorporation of the city of Jonesboro, and the act of incorporation of the Cairo and St. Louis Railroad Co., and the amendatory act of March 3, 1869, are all public acts, and are not in violation of any of the provisions of the constitution of 1848.

Unity v. *Burrage*, 103 U. S. 447.

Commissioners of Knox County v. *Aspinwall*, 21 How. 539.

In State ex rel. Cothren v. *McLean*, 9 Wis. 279.

Pierce v. *Kimball*, 9 Maine, 54.

Burnham v. *Webster*, 5 Mass. 266.

The purchaser, or holder of municipal bonds has a right to rely upon all laws in existence when the bonds are issued to support their validity, and is not bound to look beyond these laws and the recitals in the bonds for the power to issue them.

Wade v. *Walnut,* 103 U. S. 683.
Gelpecke v. *Dubuque,* 1 Wall. 206.
Marcy v. *Oswego T'p.,* 92 U. S. 641.
County of Warren v. *Marcy,* 97 U. S. 103.
Pine Grove v. *Talcott,* 19 Wall. 666.
Livingston v. *Darlington,* 101 U. S. 410.
Humboldt T'p. v. *Long,* 2 Otto, 645.
Lynde v. *The County,* 16 Wall. 13.

Under the powers embraced in the charter of incorporation of the city of Jonesboro, and the amendatory act of March 3, 1869, to the charter of incorporation of the Cairo and St. Louis R. R. Co., the vote of the people April 6, 1863, the recitals of the bonds themselves, and the oath of the Mayor when registered before the State Auditor, that all the conditions precedent required by law had been complied with, the city of Jonesboro is estopped from denying the power to issue these bonds.

Supervisor v. *Schenck,* 5 Wall, U. S. 784.
Commissioners v. *January,* 94 U. S. 202.
Town of East Lincoln v. *Davenport,* U. S. 801.
Town of Coloma v. *Eaves,* 92 U. S. 484.
Bonham v. *Needles,* 103 U. S. 648.
Buchannan v. *Litchfield,* 102 U. S. 278.
And cases therein cited.

The constitution of 1870 has no reference to bonds issued on a vote legally had before it went into effect. When the vote was taken the debt was created.

Chinniguy v. *The People, ex rel.*, 78 Ill. 571.

The vote of the municipality is equivalent to, and a substitute for, its subscription to the stock of a railroad in whose aid its bonds are issued.

Town of East Lincoln v. *Davenport*, 94 U. S. 801.

The act of March 3, 1869, as a curative act, *did not compel, but simply empowered* the council to issue these bonds, as if originally invested with authority to execute them, since the construction of a railroad within, or near the city, was a corporate purpose within the meaning of the clause.

Quincy v. *Cook*, U. S.; S. C., April 16, 1883; 2 S. C. Rep. 614.

The legislature has the power to ratify and confirm the exercise of any power it might originally confer upon a municipality in the issuing of bonds for railroad aid.

Beloit v. *Morgan*, 7 Wall. 619.
Campbell v. *City of Kenosha*, 5 Wall. 195.
Gelpecke v. *Dubuque*, 1 Wall. 220.
Thomson v. *Lee County*, 3 Wall. 327.
St. Joseph Town v. *Rogers*, 16 Wall. 663.
The City v. *Lamson*, 9 Wall. 485.

The power of the legislature to pass retrospective, or curative acts, confirming and rendering valid proceedings of municipalities previously void for want of legislative power, is an old and well settled doctrine.

Cooley on Constitutional Limitations, 461,
and cases cited.
Dillon on Municipal Corporations, sec. 79, 104.
Pierce on Railroads, p. 102, and cases cited.

There being ample authority of law in the charter of the City of Jonesboro, and in the act of March 3, 1869, amending the charter of the Cairo and St. Louis Railroad Company, and on a vote of the legal voters of the City of Jonesboro, April 6, 1868, to issue the bonds; and the holder of them having purchased them in the ordinary course of business in the commercial market of New York, without notice of any defect or want of power in their issue, is entitled to all the benefits of a *bona fide* holder for value.

Thompson v. *Lee,* U. S. 3 Wall. 327.
Goodman v. *Simonds,* U. S. 20 How. 365.
Supervisors v. *Schenck,* U. S. 5 Wall. 784.
Town of Pana v. *Bowler,* 107 U. S. 529.

ARGUMENT.

The objection to these bonds in controversy in this case is, that there was not sufficient power granted in the charter of the city of Jonesboro to render their issue legal and valid.

On page 34 of record, section 14, in the charter of the city of Jonesboro, among other powers granted, is one giving "The city officials power to borrow money on the credit of the city, and issue their bonds under the seal of the city therefor; but no money shall be borrowed on the credit of the city, except with the consent of two-thirds of the qualified voters of the city; they shall have power to appropriate money, pay debts, and provide for the general welfare of the city." * *

It is claimed that this power to issue bonds must be limited to corporate purposes, and that building or aiding railroads is not such a corporate purpose as is here contemplated. But the decisions of both State and Federal courts have held that aiding railroads was a municipal corporate purpose.

Even the Supreme Court of Illinois has defined a corporate purpose to mean: "A tax to be expended in a manner which shall promote the general prosperity and welfare of the municipality which levies it."

Taylor v. *Thompson*, 42 Ill. 9.

"A tax or appropriation for a corporate purpose is one for the benefit of the inhabitants of the municipality. Taxes levied by township authorities to aid in the construction of a railroad is a corporate purpose." * * *

The Chicago, Danville & Vincennes R. R. Co., et al., v. *Smith*, 62 Ill. 268.

The 5th section of the 9th article of the constitution of 1848, in force when the bonds were issued, provides:

> "That the corporate authorities of counties, townships, school districts, cities, towns, and villages, may be vested with power to assess and collect taxes for corporate purposes."

The Supreme Court of Illinois, in construing this section of the constitution of 1848, in the last case cited, *supra*, say:

> "If it was for a public purpose,—for the benefit of the inhabitants of the municipality,—then it would be for a corporate purpose."

This question has been fully settled by the Supreme Court of Illinois, in the following cases:

Prettyman v. *The Supervisors of Tazewell Co.*, 19 Ill. 406.

Johnson v. *The County of Stark*, *supra.*

Perkins v. *Lewis*, 24 Ill. 208.

Butler v. *Dunham*, 27 Ill. 474.

The President and Trustees v. *Frick*, 34 Ill. 405.

The constitution of Tennessee provides that:

> "The General Assembly shall have power to authorize the several counties and incorporated towns in this State to impose taxes for county and corporate purposes, respectively."

A subscription for a railroad was held to be for a corporate purpose, under that constitution.

Nichol v. *The Mayor and Aldermen*, 9 Humph. 252.

For the support of our position on this part of the case, we refer confidently to *County of Livingston* v. *Darlington*, 101, U. S. 407, where, after a very full discussion of this question, the Court say:

> "Upon this review of the decisions of the Supreme Court of Illinois, our conclusion is, that testing the validity of these bonds by the decisions of that tribunal, rendered prior to and unmodified at the date of their issue, we would be obliged to hold they were issued for a corporate purpose." * *

This decision was rendered October, 1879. The bonds in the case at bar were voted for April 6, 1868, dated July 2, 1872, and registered in the State Auditor's office October 13, 1874, and must be construed under laws and decisions then in force. This brings them under the decision of *Livingston* v. *Darlington*, *supra*, and would seem to be conclusive in their favor.

PRIVATE ACTS.

It is claimed that the charter of incorporation of the city of Jonesboro, and the amendatory acts conferring power to issue these bonds, are private acts, and repugnant to section 23, article 3 of the constitution of 1848, then in force.

The charter of incorporation of the city of Jonesboro, declares in terms:

> "That it is a public act, and shall be taken in evidence in all courts of law and equity within the State without further proof, and shall take effect and be in force from and after its passage." (See Laws relied on.)

This question has been settled in this court. This court say:

> "A statute was declared a public act. A subsequent statute, supplementary thereto, and amendatory thereof, is also a public act, and need not be specially pleaded. A statute of Illinois, legalizing elections held by the voters of a county, in aid of certain railroad companies, and authorizing, on conditions therein named, all townships in counties where township organizations had been adopted, lying on or near to the line of a specified railroad, to subscribe to the stock of the railroad company, and issue negotiable bonds therefor, is a public act."
>
> "Such a statute does not conflict with section 23 of article 3, of the constitution of 1848, which provides that 'no private or local law, which may be passed by the General Assembly, shall embrace more than one subject, and that shall be expressed in the title.'"

Unity v. *Burrage*, 103 U. S. 447.

In the same line may be cited the following:

Commissioners of Knox Co. v. *Aspinwall,* 21 How. 539.

In State ex. rel., Cothren v. *McLean,* 2 Wis. 279.

Pierce v. *Kimball,* 9 Maine, 54.

Burnham v. *Webster,* 5 Mass. 266.

San Antonio v. *Mehaffy,* 96 U. S. 312.

The Belleville &c. R. R. Co. v. *Gregory,* 15 Ill. 20.

"*Bona fide purchasers of municipal bonds are not bound to look beyond the recitals on the bonds and the laws in existence at the time of their issue.*"

At the time these bonds were issued, the charter of incorporation of the city of Jonesboro, the act to incorporate the Cairo and St. Louis Railway Co. of 1865, and the act amendatory thereof of 1869, were in force. (See Laws relied on.)

These laws gave ample power for the issue of these bonds. The charter itself, as we have shown above, under the decisions of the Supreme Court of Illinois and this honorable Court, granted the power to issue the bonds as they were issued and delivered.

The act in force March 3, 1869, amendatory to the act of February 16, 1865, is very full and minute in granting the power to issue bonds to railway companies by public municipalities.

This act in reference to municipalities, where the election was held prior to its passage, is as follows—section 2 and second proviso:

"*Provided,* that all elections heretofore held in any county, city or town, in reference to a subscription to aid railroads, are hereby declared legal and binding, and the county court of any county, and the corporate authorities of any city or town in which such elections have been already held, and a majority of the votes cast were for subscription, shall have authority to issue bonds for such an amount as was voted for, nothwithstanding any insufficiency, or informality or irregularity in such election or in the notice thereof." * * *

(See Laws relied on.)

This court say, "A *bona fide* holder of the bonds is not bound to look beyond the legislative act and the recitals in the bonds."

Wade v. *Walnut*, 103 U. S. 683.

Towm of Coloma v. *Eaves*, 92 U. S. 484.

Marcy v. *Township of Oswego*, 92 U. S. 637.

Up to the date of the issue of these bonds, and for a long time after, the decisions of the State Supreme Court of Illinois, had always sustained these curative acts, and bonds issued where there was a supposed want of plenary power save in the curative acts, were held good. The doctrines laid down in *Frick* v. *Keithsburg*, 34 Ills., 406, was the rule at that time. In that case the court say:

"It is competent for the Legislature to confer directly upon a municipal corporation the power to subscribe for stock in railroads, without any previous vote of the people of the town or city in favor thereof."

"It seems that a subscription to the capital stock of a railroad company, made in pursuance of a vote by the citizens of a town incorporated under the general incorporation act, may be legalized and confirmed by a subsequent enactment."

* * * "The 17th section purported to legalize and confirm a subscription theretofore made by said corporation to the railroad company, while the town was acting under the general incorporation act of 1849. The bonds were not issued until after the enactment of the special charter: *Held*, that whether the bonds were issued by virtue of the second or of the seventeenth section of the act of 1857, the corporation was estopped from setting up any irregularity in their issue, inasmuch as it had repeatedly recognized their validity by paying them out, levying taxes and paying the interest thereon for a series of years."

Town of Keithsburg v. *Frick*, 34 Ills., 405.

Where bonds issued to *bona fide* holders for value are valid by the judicial decisions of a State when issued, subsequent decisions in the same State cannot destroy their validity in such hands.

The City v. *Lamson*, 9 Wall. 477.

The Ohio Life and Trust Co. v. *Debolt*, 16 How. 432.

Gelpecke v. *City of Dubuque*, 1 Wall. 206.

Even if, from any view of this case at bar, there should seem to be wanting sufficient legislative power to authorize the issue of these bonds in the charter of incorporation and the ordinances thereunder, the curative act of 1869, in force when the bonds were issued, grants ample power for their issue, and confirms and legalizes the vote taken for their issue. And under the decisions, even, of the State Court at that time, they must be held good.

Ratification by the Legislature is in all respects equivalent to original authority, and cures all defects of power, and all irregularities in execution of the power.

This court say:

> "That it is not an open question in this Court. Whenever it has been presented, the ruling has been that, in cases of bonds issued by municipal corporations, under a statute upon the subject, ratification by the Legislature is in all respects equivalent to original authority, and cures all defects of power, if such defects existed, and all irregularities in its execution."

Beloit v. *Morgan*, 7 Wall. 619.

Gelpecke v. *Dubuque*, 1 Wall. 220.

Thomson v. *Lee Co.*, 7 Wall. 331.

Bissell v. *City of Jeffersonville*, 24 How. 291.

St. Joseph Township v. *Rogers*, 16 Wall, 663.

There can be no doubt, from the evidence submitted, that the defendant is a *bona fide* holder for value paid, and without any notice whatever of any claimed want of power to issue these bonds, or of any irregularity in the issue. In fact, he swears he paid a premium on these bonds, and purchased them in open market in the usual course of business, November 10, 1880, and that he had no notice whatever of any irregularity or want of power in their issue, or of any suit pending involving their validity. (*Record, p.* 26.)

The recitals are very full:

> "This bond is issued under and by virtue of the charter of said city, and of ordinances passed in pursuance thereof, in payment of so much of the subscription of said city for fifty shares of the capital stock of said Cairo and St. Louis Railroad Company. The proposition to subscribe for said stock having been first submitted, as required by law, to the qualified voters of said city for their approval or rejection, at a special election, regularly held for that purpose at the various voting precincts or wards, in and of said city, on the 6th day of April, A. D. 1868, and more than two-thirds of said voters having at said election assented thereto, and said majority of voters also being a majority over all the votes cast at the last election preceding regular election held in and for said city, and said Cairo and St. Louis Railroad Company having duly performed all the conditions of said scbscription to be performed on its part before said bond was issued.
>
> "In testimony whereof, said city has caused these presents to be sealed with its seal, and to be signed by its Mayor, and countersigned by its Treasurer and Clerk, this first day of July, A. D. 1872." (*Record, p.* 32.)

These recitals state that the election was called and the proposition submitted as required by law, on the 6th day of April, 1868; that more than two-thirds of the voters at the election assented to the subscription, and that said majority of voters was a majority over all votes cast at the preceding regular election, and that all the conditions had been performed by the railroad company before the bonds were issued;

and these bonds are signed by the Mayor, City Treasurer and Clerk, all of the officers of the city whose duty it was by law to decide whether the conditions precedent had been complied with by the railroad company. In these recitals all the requirements of the charter and ordinance are fully, strictly and legally complied with.

This Court has, through a long line of decisions, held that such recitals by the corporate authorities of the exercise of a legislative power to issue bonds, validated them in the hands of a *bona fide* purchaser, such as we have shown the defendant in error to be.

> "It is a settled rule of law that, where a public functionary is clothed with the duty of deciding such a question, his decision, in the absence of fraud or collusion, is final. It is not open for examination, and neither party can go behind it. Here the bonds are in the hands of a *bona fide* purchaser, and under the circumstances he was not bound to look beyond the averments on their face."

Lynde v. *The County*, 16 Wall. 13.

Wade v. *Walnut*, 103 U. S. 683.

Gelpecke v. *Dubuque*, 1 Wall. 206.

County of Warren v. *Marcy*, 97 U. S. 103.

Marcy v. *Osweyo Township*, 92 U. S. 641.

County of Moultrie v. *Rockingham Sav. Bank*, 92 U. S. 636.

Commissioners of Johnson Co. v. *January*, 94 U. S. 202.

Town of Coloma v. *Eaves*, 92 U. S. 484-488.

Pine Grove v. *Talcott*, 19 Wall. 666.

The plaintiff, under the facts in this case, is estopped from denying the power to issue these bonds.

In this case there had been a vote of the legal voters of the city, taken according to law, and two-thirds of them voted in favor of the subscription.

The bonds were regularly issued, and purchased for a valuable consideration before maturity, and without any notice of defects in the power or irregularities in its execution.

The recitals made by the corporate authorities on the bonds, state that all conditions precedent had been complied with by the railroad company before the bonds were executed and delivered.

The Mayor swears when they were registered that they were issued on a vote of the people, held April 6, 1868, and under the amendatory act of March 3, 1869, which gives ample power for their issue, and which was in force at the time of their issue. (*Record, p.* 27.)

The city of Jonesboro had paid the interest on these bonds by regular levy and collection of taxes therefor for *ten years,* without any dissent, or notice of any kind of irregularity in their issue or want of legislative power.

The city of Jonesboro had made a formal subscription for the stock voted for on the books of the railroad company, and hold the same to-day for aught that appears in the record. (*Record, p.* 9.)

Under these circumstances, we insist that the plaintiff in error is estopped from denying the power to issue the bonds.

If there ever was a case where the doctrine of estoppel should be invoked and upheld, we submit this is the case.

In *Commissioners, etc.,* v. *January,* 94 U. S. 202, a case very analogous to the case at bar in the leading questions at issue, this Court say:

"The bonds recite that they were issued in conformity to law, and in pursuance of the election held. It is true they refer to the wrong statute, but *falsa demonstratio non nocet.* The bad does not hurt the good. The act of the commissioners was the act of the county, and the county is conclusively bound by what they have done. As between the county and a *bona fide* holder, no question involving the infirmity of the securities can be raised. The principle of estoppel applies, and it precludes the obligor from interposing such a defence."

* * * "Taking and holding the certificate of stock, issuing and delivering the bonds and paying the interest for a time, cured the defect as to the order for an election, if any such existed. Under the circumstances, a *bona fide* taker has had a right to presume that everything had been properly done which was necessary to the validity of the bonds. When this suit was instituted, the objections which have been made were too late."

In the same line we cite:

Supervisors v. *Schenk,* 5 Wall. 772.
Olcott v. *The Supervisors,* 16 Wall. 698.
City of Lexington v. *Butler,* 14 Wall. 283.
Pendleton County v. *Amy,* 13 Wall. 298.
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St. Joseph v. *Rogers,* 16 Wall. 644.
Pine Grove v. *Talcott,* 19 Wall. 666.
Bonham v. *Needles,* 103 U. S. 648.
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☞ The constitution of 1870 has no reference to this case.

The State Supreme Court has decided that the new constitution, that of 1870, does not apply to cases where a tax was levied to pay interest upon bonds given in aid of a railway, voted before the adoption of that instrument, although the subscription and the issue of the bonds occurred after its adoption.

Chinniquy v. *The People, ex rel.,* 78 Ill. 570.

The bonds were regularly issued, and purchased for a valuable consideration before maturity, and without any notice of defects in the power or irregularities in its execution.

The recitals made by the corporate authorities on the bonds, state that all conditions precedent had been complied with by the railroad company before the bonds were executed and delivered.

The Mayor swears when they were registered that they were issued on a vote of the people, held April 6, 1868, and under the amendatory act of March 3, 1869, which gives ample power for their issue, and which was in force at the time of their issue. (*Record, p.* 27.)

The city of Jonesboro had paid the interest on these bonds by regular levy and collection of taxes therefor for *ten years*, without any dissent, or notice of any kind of irregularity in their issue or want of legislative power.

The city of Jonesboro had made a formal subscription for the stock voted for on the books of the railroad company, and hold the same to-day for aught that appears in the record. (*Record, p.* 9.)

Under these circumstances, we insist that the plaintiff in error is estopped from denying the power to issue the bonds.

If there ever was a case where the doctrine of estoppel should be invoked and upheld, we submit this is the case.

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Chinniquy v. *The People, ex rel.*, 78 Ill. 570.

This is our case exactly on this question, and clearly shows that our claim is not inconsistent with the new constitution of 1870.

The vote of the electors is the subscription.

In suit of *bona fide* holders, as in the case at bar, the vote is the subscription for the stock of the railway company, and questions of fraud and irregularity cannot be considered.

Town of East Lincoln v. *Davenport,* 94 U. S. 801.

In the case at bar the subscription was actually made in addition to the vote, and 250 shares, at $100 a share, was actually taken; and, as far as appears from the record, is now held by the plaintiff in error. (Record p. 9).

The city of Jonesboro was not compelled to subscribe for the stock of the Cairo and St. Louis R. R. Co., by the curative act of 1869.

The curative act of 1869 did not in any sense compel, but *simply empowered,* the city council to issue bonds, as if originally invested with authority to execute these bonds, since the construction of a railroad within or near the city was a corporate purpose within the meaning of the clause.

Quincy v. *Cook,* U. S. S. C., April 16, 1883; 2 S. C., Rep. 614.

The argument that the city was compelled by legislative power to issue these bonds is an absurdity. They not only issued them in good faith, but paid the interest for ten long years, and to now try to avoid their payment on the ground that they were compelled to issue them by the legislative act, is the heighth of nonsense, and utterly unworthy of consideration. They not only issued these bonds in good faith at the time, paid interest on them for ten years, but the mayor of the city, in addition to the recitals, swears that they were issued under the act of March 3, 1869, the curative act, in his affidavit before the Auditor of State for registration,—thus invoking the powers conferred by that act, in support of the validity of these bonds. Upon their own interpretation of their legislative power to issue the bonds, they not only cite the powers of their original charter, in the recitals, but also invoke the aid of the powers granted by the act of March 3, 1869, in the affidavit for registration of these bonds, and that too by their mayor, their highest city official. The registration of these bonds and the affidavit of their mayor thus becomes a part of the record, and the purchaser had a right to rely upon it, as it was indorsed upon the bonds, in purchase of them.

But counsel for plaintiff in error claim that the act of March 3, 1869, whose aid they invoked in the registration and sale of their bonds on the commercial marts of the country, was not an amendment to the charter of the city of Jonesboro. They refer in their ordinance to the subscription of $50,000 of capital stock to the Cairo and St. Louis Railway Company, and the issue of these very bonds in controversy in this suit in payment therefor. (Record p. 39).

They refer in their recitals in these bonds acknowledging their indebtedness to the Cairo and St. Louis Railroad Company. (Record p. 32).

In their ordinance of subscription of stock, they again subscribe to the capital stock of the Cairo and St. Louis Railroad Company $50,000. (Record p. 42).

This act of March 3, 1869, unquestionably enlarged and made certain the right of that city to subscribe to the capital stock of the Cairo and St. Louis Railroad Company by naming and specifying to what particular railroad it might issue its bond in payment of stock subscribed. In this sense it is undoubtedly an amendment. The subject matter is the same in the amendatory act—the ordinance for subscription—the affidavit of registration and the recitals on the bonds,—namely: the issue of bonds by the City of Jonesboro to the Cairo and St. Louis Railroad Company, and these very bonds in controversy, and no others. All these acts in Illinois, whether original acts or amendatory, are simply legislative grants of power to cities, towns and counties, along the line, to subscribe to the capital stock of their roads, and are held by the Federal and State Courts as giving power to such municipal corporations as choose to avail themselves of the powers granted therein, as binding upon such municipalities as avail themselves of these granted powers. There is no question but what the City of Jonesboro did avail itself of the powers granted in the act of March 3, 1869, in force when the ordinance for subscription was drawn, and when the bonds were issued, registered and delivered, and that it cannot now deny that it is bound by the terms of that act, and that the purchaser relied upon it when he bought the bonds.

The extent of powers of an amendatory act is discussed in

Town of Pana v. *Bowler et al.*, 107 U. S. 529.

The legislature has the power to ratify and confirm the exercise of any power it might originally confer upon a municipality in the issuing of railroad bonds.

It is not contended by counsel for plaintiff in error that the powers granted in the amendatory or curative act of March 3, 1869, were unconstitutional. They claim that that act having been passed after the vote was taken, that it can be of no force in validating these bonds. But while passed after the vote was taken in this case, it expressly confirms and ratifies and legalizes this very vote, and was in force when the ordinance of subscription was passed by the city council, and when the bonds were issued, delivered and registered. This Court has held that a *bona fide* purchaser had a right to rely upon all laws in existence when his bonds were issued, whether recited on their face or not.

Supervisors v. *Schenk,* 5 Wall. 784.

The Supreme Court of Illinois say:

> "If a municipal corporation assumes special powers which it does not possess, and pursuant to such assumption enters into contracts, it must fulfill its contracts or pay the damages by virtue of the general powers it does possess."

Maher v. *The City of Chicago,* 38 Ill. 266.

Under its charter, as we have seen, the City of Jonesboro, undoubtedly had the general power to borrow money and issue bonds therefor. In the same case, *supra,* the Court say:

> "That the city was bound by the vote of its city council, if not by the earlier acts of its officers, and was liable on its contract."

If this be the law, and no Court has gone farther than the Supreme Court of Illinois in protecting public municipalities on their contracts, the City of Jonesboro is bound to pay these bonds by her charter of incorporation and the votes of her city council for the election and the subscription, irrespective of the curative or amendatory act of March 3, 1869.

This Court say:

> "If the legislature possess the power to authorize an act to be done, it can, by a retrospective act, cure the evils which existed, because the power thus conferred has been irregularly executed."

Thompson v. *Lee County*, 3 Wall. 327.

Again this Court say:

> "It is not doubted the legislature could, by a direct act of confirmation, legalize the issue of this scrip, notwithstanding the submission of the question to the vote of the people was under the wrong law. If by a direct act, equally in any other way, if the intention of the legislature to legalize clearly appear."

Campbell v. *City of Kenosha*, 5 Wall. 203.

There is no possible doubt but that the Legislature intended to legalize the issue of the bonds in the case at bar in the act of March 3, 1869.

We may add the following cases in support of curative, or amendatory acts:

Beloit v. *Morgan*, 7 Wall. 619.
Gelpecke v. *Dubuque*, 1 Wall. 220.
St. Joseph Town v. *Rogers*, 16 Wall. 663.
The City v. *Lamson*, 9 Wall. 485.

We do not admit that there is any such want of power in the charter of the city of Jonesboro as could render these bonds void, even if the act of March 3, 1869, had never been passed. But if that were the case, the act of 1869 would save them in any event.

Cooley on constitutional limitations, 461, and cases cited.

Dillon on municipal corporations, 79, 104.

Pierce on railroads, 102, and cases cited.

We claim there was ample power under the charter of the city of Jonesboro, and the act of March 3, 1869, and the unanimous vote of the electors, April 6, 1868, for the issue of these bonds. And the holder of them having these acts before him, the affidavit of the Mayor when registered that all requirements of the laws had been complied with, the recitals on the bonds that the election was lawfully called and held, that all precedent conditions had been complied with on the part of the railroad company, and the unbroken line of decisions by the Supreme Court of Illinois, and the Federal Courts of the Nation up to the time of their execution and delivery sustaining the laws under which they were issued and delivered, and the purchase of these bonds for a premium paid in the commercial center of business in the nation, without any notice of any defect of power or claimed irregularity in their issue, and a knowledge of the fact that this city had paid without default or delay their interest on these bonds for nine or ten years, is entitled to all the benefits of a *bona fide* or innocent holder for value, without notice of any claimed defects or irregularities in their issue.

This Court say:

> "When a corporation has power, *under any circumstances*, to issue negotiable securities, the decision of this Court is that the *bona fide* holder has a right to presume they were issued under the circumstances which give the requisite authority, and they are no more liable to be impeached for any infirmity in the hands of such a holder than any other commercial paper."

Supervisors v. *Schenk*, 5 Wall. 784.

Gelpecke v. *Dubuque*, 1 Wall. 203.

Lynde v. *The County*, 6 Wall. 16.

Town of Coloma v. *Eaves*, 92 U. S. 484.

Town of Pana v. *Bowles et al.*, 107 U. S. 529.

We do not think there is anything whatever in the testimony of Mr. Grear, on p. 44 and 45 of record, that in any way affects these bonds.

Mr. L. R. Graves, the holder of these bonds, swears positively that he purchased these bonds November 10, 1880, and paid a premium for them without any notice whatever of any irregularity of issue, or want of power of law to issue the same, and that he knew nothing whatever of the pendency of this suit until on or about October 25, 1882. (*Record p.* 16.)

And again, on p. 26, record, in his answer, he swears to the same state of facts.

This testimony is no where contradicted or overcome, and must stand.

But even if Mr. Grear's testimony was to have any effect as to notice in reference to the effort of the railroad company to enforce the issue of the other $25,000 of bonds from the City of Jonesboro, this Court has fully settled that question in *County of Warren* v. *Marcy*, 97 U. S. 105, where this Court say:

> "That notwithstanding all this, the *bona fide* holder of the bonds was entitled to recover upon them. It being contended that he was bound to take notice of the *lis pendens*, for avoiding the bonds, the Court held otherwise, on the ground that there was no continuous litigation. The first suit was determined before the issue of the bonds, and the record was not commenced until after they had been issued. No suit was pending when they were issued."

Under this decision the case at bar comes, for there were no suits pending when these bonds were issued and delivered. The suits referred to by Mr. Grear had reference entirely to the $25,000 of bonds which the railroad claimed, but which were never issued. After the city had obtained the road they refused to issue the balance of the bonds for its payment, and what they say in his testimony simply advertises their dishonor, but in no sense touches the validity of these bonds in this suit, or affects the *bona fide* holding of the defendant in error.

This Court further say:

County of Warren v. *Marcy*, 105, *supra*.

"This case is an authority for the position that bonds of this sort may be valid in the hands of a *bona fide* holder, notwithstanding the fact that the preliminary proceedings requisite to their issue may have been so defective as to sustain a direct proceeding against the county officers to annul them or prevent their issue."

"In proceedings for the enforcement of payment of municipal bonds, the policy of the Federal courts is to sustain, if possible, the validity of the bonds, and they will refuse to invalidate the same, except for grave and serious infirmities, even when the question which arises is a doubtful one. A construction should be given to the statute which upholds the bonds, rather than one which invalidates them in the hands of a *bona fide* holder."

Rich v. *Town of Mentz*, Circuit Court, N. D. N. Y., September, 1883.

In the case at bar, all the equities are with the holder of these bonds. The city has ratified the contract made with the holder when the bonds were issued by the regular and prompt payment of the interest for ten years. The bonds were purchased in the open market, and a premium paid for them, and without any notice whatever of any want of power and claimed irregularity in the issue, and this is proved by the fact that a premium was asked and paid for them on the purchase.

We do not think there is a single, sound proposition of law that can be raised to defeat these bonds; but in addition to the equities, we believe the law is with the holder of these bonds.

We, therefore, confidently ask this highest tribunal in our nation to affirm the judgment of the U. S. Circuit Court, and thus compel the city of Jonesboro to pay its just and legal obligations.

GEORGE A. SANDERS,
Attorney for LUTHER R. GRAVES,
Defendant in Error.

PRIVATE LAWS, ILLINOIS, 1857.

Pages 74 to 81.

AN ACT *to incorporate the inhabitants of J*

Article 1, with four sections, gives style of incorporation, boundaries and power of city council to enlarge same, and names of trustees.

Article 2, with twenty-four sections, gives powers of the city council.

Section 14, of Article 2, contains the powers of the council to borrow money, and is as follows:

"They shall have power to appoint a clerk and all other officers not made elective by this act, which shall be necessary, and the officers thereof created by ordinance of the board; they shall have the power to require and approve bonds of all officers appointed in pursuance of this charter with penalties and security for the faithful performance of their respective duties; *to borrow money, on the credit of the city, and issue their bonds under the seal of the city therefor, but no money shall be borrowed on the credit of the city, except with the consent of two-thirds of the qualified voters of the city;* they shall have power to appropriate money, pay debts, and provide for the general welfare of the city; to establish hospitals, and make regulations for the government of the same, and to secure the general health of the inhabitants; and declare what shall be a nuisance, and to prevent and remove the same."

Section 44, of Article 2, is as follows:

"This act is hereby declared *a public act*, and shall be taken in evidence in all courts of law and equity within the State without further proof, and shall take effect and be in force from and after its passage.

"APPROVED January 28, 1857."

Resolutions and ordinances of the city of Jonesboro, in relation to this case, referred to in the recitals on the bonds and used in evidence.

RESOLUTION.

"*Be it resolved by the city council of the city of Jonesboro,* That the question of the city of Jonesboro subscribing fifty thousand dollars to the capital stock of the Cairo and St. Louis Railroad Company and issuing bonds therefor, payable within twenty years from date, at the option of the said city, bearing interest at the rate of 8 per cent. per annum from date of issue, conditioned that said railroad passes through the corporate limits of said city, with a depot therein at some suitable and convenient place to the acceptance of the city council; that said railroad be completed from Cairo to St. Louis within a reasonable time, be submitted to the legal voters of said city at the next regular election to be held on the 6th day of April, 1868, and that the clerk give the legal notices."

"*And be it further resolved,* that if a majority of all the legal votes cast at said election be for subscribing $50,000 stock, then, in that case, when said railroad shall be graded ready for laying the rails from either of the extreme ends through the city of Jonesboro, then one-half of said bonds shall be issued, and the other half when the cars are running through from Cairo to St. Louis. Said bonds, when issued, shall be of the denominations not exceeding $5,000 each, and shall be signed by the mayor, attested by the city clerk under the seal of said city, and countersigned and registered by the city treasurer.

"Passed and approved, March 2, 1868.

"Attest: PAUL FRICK,

"J. H. Samson, *City Clerk.* *Mayor.*"

" Ordinance No. 63.

"An Ordinance *to authorize a subscription of $50,000 to the capital stock of the Cairo and St. Louis Railroad Company.*

"Whereas, At a regular meeting of the city council of the city of Jonesboro, in the county of Union, and State of Illinois, held at their council room on the 2d day of March, A. D. 1868, the following resolution was adopted by said council, to-wit:

"'*Be it resolved by the city council of the city of Jonesboro,* That the question of the city of Jonesboro subscribing fifty thousand dollars to the capital stock of the Cairo and St. Louis Railroad Company, and the issuing of bonds therefor payable within twenty years from date, at option of said city, bearing interest at the rate of 8 per cent. per annum from date; conditioned that said railroad passes through the corporate limits of said city, with a depot at some convenient and suitable place therein, to the acceptance of the city; that said railroad be completed from Cairo to St. Louis within a reasonable length of time, be submitted to the legal voters of said city at the next regular election, to be held on the 6th day of April, A. D. 1868, and that the clerk give the legal notice'; and, "WHEREAS, In pursuance of said resolution, an election was held on the 6th day of April, A. D. 1868, in the several wards of said city, at the usual voting places therein, when and where the legal voters of said city voted upon the question submitted in accordance with said resolution, and that due legal notice of said election was given by the city clerk of said city, and,

"WHEREAS, By a return from the several wards of said city it appears that one hundred and thirty-one (131) votes were given in favor of such subscription, and none (0) were given against subscription.

"Section 1. Now, therefore, for the purpose of giving effect to the wishes of the voters of said city, be it enacted by the city of Jonesboro that a subscription of fifty thousand dollars to the capital stock of the Cairo and St. Louis Railroad Company be, and the same is hereby made upon the conditions specified in said resolution.

"Section 2. Be it further enacted, that for the purpose of paying such subscription, there shall be issued bonds in the sums of one thousand dollars each, to the aggregate amount of fifty thousand dollars, numbered from one to fifty, inclusive, payable within twenty years from date, with interest at eight per cent. per annum, and the city clerk shall cause the said bonds to be prepared, and shall deliver the same to John E. Nail, who is hereby appointed agent on behalf of the city to receive from the clerk the said bonds, and to deliver the same to the said company, its authorized agent or officer, upon compliance by the said company with the conditions in said resolution specified, and at the same time to receive from the said company its certificate or certificates of stock (paid up) in said company, to an amount equal to the amount of bonds so delivered, and that he immediately deliver such certificate or certificates to the city council. Said bonds, prior to their delivery by said John E. Nail to the said company, shall be canceled, and the coupons due, or so many as to amount to the amount of interest accumulated, shall be returned to the city council, or any fractional part canceled on the coupon or coupons.

"Passed and approved July 21, 1871.

[Attest] PAUL FRICK, *Mayor.*"

JOHN GREAR, *City Clerk.*

PRIVATE LAWS OF ILLINOIS, VOL. 2, 1865, PAGE 135.

AN ACT *to incorporate the Cairo and St. Louis Railroad Company.* In force Feb. 16, 1865.

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That Sharon Tyndale, Isham N. Haynie, Samuel Staats Taylor, John Thomas, Wm. H. Logan, Wm. P. Halliday, and Tilman B. Cantrell, and their associates, successors and assigns, be and they are hereby created a body politic and corporate, under the name and style of "The Cairo and St. Louis Railroad Company," and by that name be and they are hereby made capable, in law and equity, to sue and be sued, plead and be impleaded, defend and be defended, in any court of law or equity in this State or elsewhere; to make, have and use a common seal, and the same to renew and alter at pleasure, and shall be and hereby are, vested with all powers, privileges and immunities, which are or may be necessary to construct, complete and operate a railroad with double or single track, from the City of Cairo to any

Corporators.

Name and style.

Powers.

point opposite the City of St. Louis, in the State of Missouri; and for that purpose, to enter upon and take possession of, so much land as may be necessary to construct, complete and operate said railroad and its appendages; and if said company cannot agree with the owner or owners of said land taken as aforesaid, it may be lawful for them to proceed in the manner now provided by laws of this State, for the condemnation of lands by incorporated companies, and may exercise also for said purpose, all such powers as have been heretofore, or may be hereafter, conferred upon any other railroad company incorporated by the laws of this State.

Capital stock.

§ 2. The capital stock of said company shall be three millions of dollars, which may be increased by said company to any sum not exceeding five millions of dollars; which may be divided into shares of one hundred dollars each, which shall be deemed personal property, and may be issued and transferred in such manner as the board of directors may prescribe.

Directors.

First board.

§ 3. The affairs of said company shall be managed by a board of seven directors, which may be increased to any number not exceeding thirteen; and Sharon Tyndale, Isham N. Haynie, Samuel Staats Taylor, John Thomas, William H. Logan, William P. Halliday, and Tilman B. Cantrell, are hereby appointed the first board, who shall hold their offices until their successors are elected and qualified, in such manner as may be prescribed by the by-laws of said company. Said board shall have the power of electing one of their number president, and such other officers as may be prescribed by the by-laws; and said corporation shall be and is hereby vested with all the powers conferred upon railroad incorporations by the general railroad laws of the State of Illinois, or any amendment now made or hereafter to be made thereto.

§ 4. Said corporation shall have power to unite its railroad with any other railroad now constructed, or which shall hereafter be constructed, upon such terms as may be mutually agreed upon between the companies so connecting; and from time to time to borrow such sums of money as may be necessary for the purposes of said company, and at any rate of interest not exceeding ten per cent. per annum; and to issue and dispose of their bonds in denominations of not less than one hundred dollars for any amount so borrowed; and to mortgage their corporate property, real or personal, and their franchise, or convey the same by deed of trust to secure the payment of any money so borrowed, or any other debt of said company. Junction with roads.

§ 5. Nothing contained in this act, or in any law of this State, shall authorize said company to take for the uses and purposes of the company or otherwise, or to impair any portion of the levees or embankments already constructed and erected around the City of Cairo, or to be constructed and erected by the trustees of the Cairo city property, or by any person or corporation under existing agreements with them, except by the consent of said trustees and of the City of Cairo. Restrictions.

§ 6. This act shall be a public act, and shall take effect and be in force from and after its passage.

APPROVED, February 16, 1865.

Private Laws—State of Illinois.

Vol. 3, 1869; Pages 256, 257, 258.

In force April 15, 1869.

An Act *to amend an act entitled "An act to incorporate the Cairo and St. Louis Railroad Company," approved February 16, 1865.*

Organized towns may take stock.

Levy and collect tax.

Submitted to legal voters

Section 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That the several towns, cities and counties through, or near which said railroad may pass, and the several townships in said counties which have adopted or may hereafter adopt township organization, may subscribe for and take stock in said company, or may make a donation in aid of the construction of said road, and may issue bonds, in such sums as they may deem sufficient, in payment of such subscriptions to said stock or of such donations, said bonds not to bear a greater rate of interest than ten per cent. per annum, payable either within the State or at some point without the same, and not to run longer than thirty years, and a tax of not more than one dollar on each hundred dollars worth of taxable property may be levied and collected in such town, city, county or township, per annum, to pay the installments on such stock or donation, or to pay the interest and principal, or either, of bonds issued in payment for such stock or donation; and said towns, cities, counties or townships may donate any swamp or overflowed lands, or the proceeds thereof, or any other disposable property, in aid of the construction of said road: *Provided,* That no such subscription or donation shall be made, no such bonds shall be issued, and no such tax shall be levied, unless a majority of the legal voters of said town, city, county or township shall vote for the same, at an election to be held under the order of the corporate authorities in cases of towns and cities, and of county court in cases of counties, or supervisors of townships, as is now provided for by law, or as may be hereafter provided for: *And, provided, further,* That a majority of legal voters at any such election shall be held as a majority of the legal voters of any such township, town, city or county, and that the question of making a subscription or donation, of issuing bonds and levying taxes, may be submitted as one question, or as seperate questions, at such election, and either or all of said questions may be submitted to an election, at any time, in the discretion of the parties authorized to call such election; thirty days' notice of such election to be given, as in cases of county elections.

Stock subscriptions.

Petition for an election.

Notice of elections.

§ 2. Whenever a petition shall be presented to the county, city or town clerk, of any county, city or town, or supervisors of any township, through or near which said railroad may pass, signed by at least fifty legal voters of such county, city, towns or township, setting forth the amount of stock proposed to be taken in such railroad company, or donation to be made by any such county, city, town or township, and specifying the time for holding the election, it shall be the duty of such county, city or town clerk, or supervisor of township, to give thirty days' notice of the time of holding such election, which shall be the same time as that specified in such petition; which said notice shall be given in the same manner, and such election or elections shall be conducted in the same mode and held in the same places provided for holding general elections in such counties, cities, towns or townships, and the returns of such elections shall be made in the same manner and within the same time, and shall be opened and declared in the same manner as for other elections held in such counties, cities, towns or townships. If a majority of the votes cast at such election shall be for such subscription or for donation, it shall be the duty of the county court, the corporate authorities of such city or town, and supervisors and clerks of such township to subscribe, upon the request of said company, for stock in said company to the amount so voted for, and to issue and deliver to said company the same amount as the stock so subscribed or donation made of the bonds of such county, city, town or township: *Provided*, that at any election held under the provisions of this act, at any other time than that for general elections, the registry of the legal voters at the last general election shall be a legal registry for the purposes of said special election under this act: *And, provided, further*, That any legal voters whose names do not appear on the register for said general election, shall be allowed to vote, and his vote received and taken in same manner and with like effect as unregistered legal voters' votes are now received and taken: *Provided*, That all elections heretofore held in any county, city or town, in reference to a subscription to said railroad, are hereby declared legal and binding, and the county court of any county and the corporate authorities of any city or town in which such elections have been already held, and a majority of the votes cast were for subscription, shall have authority to issue bonds for such an amount as was voted for, notwithstanding any insufficiency, or informality, or irregularity in such election, or in the notice thereof: *And, provided, also*, That said railroad company may lease its road, as the board of directors may determine.

Who may subscribe stock.

Registration of voters.

Issue bonds.

Petition to the school trustees for an election.

§ 3. Whenever a petition shall be presented to the trustees of schools of any township in any of the counties, through or near which said railroad may pass, in which said county the township organization has not been adopted, and which said petition shall be signed by at least fifty legal voters of said township, praying that an election may be ordered in said township, in reference to a subscription, or donation to said railroad, and setting forth the amount or donation to said railroad, and setting forth the amount of stock proposed to be taken in said railroad, or donation of stock proposed to be taken in said railroad, or donation to be made to such township, and specifying the time for holding the election, it shall be the duty of such trustees, at any regular or special meeting, to order an election in accordance with the prayer of said petitioner. When the election shall have been so ordered, it shall be the duty of the school treasurer to give notice of the election in the same manner as notices are now given of the leection of school trustees. Said notice shall contain the particulars prescribed in the preceding section of this act for elections under that section, and shall be given for thirty days before said election. Said election shall be held in such place in such township as the trustees of schools may direct; and at such election two of said trustees shall act as judges and one as clerk of said election. In case of absence of such judges at the appointed time [for] the election, or their refusal to act, the voters assembled shall choose two judges and one clerk from among the bystanders. At the close of the election the judges and clerks shall count the votes given, and make return as in elections for school trustees. If a majority of the votes given are for subscription or donation, it shall be the duty of said trustees, in their corporate capacities, and school

School treasurer to give notice.

Judges of election.

treasurer, and they are hereby authorized to issue bonds to said railroad company, in the same manner and with like effect as is provided for in the previous section of this act for the payment of interest upon said bonds. The said trustees of schools shall certify to the county clerk the amount required to be paid, as is now done by the school directors for school tax; and said amount, so required, shall be levied and assessed upon the property, real and personal, in said township, subject to taxation for general purposes, and shall be collected as the school tax, as is now done with the school tax; but said amount, thus levied and collected, shall be held and used for payment of the interest upon said bonds, and for no other purpose whatever.

School directors may assess tax.

§ 4. This act shall be in force from and after its passage.

110-192

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

NO. 1049.

THE CITY OF JONESBORO, Appellant,

vs.

THE CAIRO AND ST. LOUIS RAILWAY COMPANY
ET AL., Appellees.

Appeal from Southern District of Illinois.

REPLY OF APPELLANT.

W. S. DAY,
Attorney for Appellant.

ANNA, ILLINOIS,
"THE FARMER AND FRUIT GROWER" STEAM PRINT,
1883.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

NO. 1049.

THE CITY OF JONESBORO, APPELLANT,

vs.

THE CAIRO AND ST. LOUIS RAILWAY COMPANY
ET AL., APPELLEES.

APPEAL FROM SOUTHERN DISTRICT OF ILLINOIS.

REPLY OF APPELLANT.

In presenting this reply to the argument of counsel for Appellee, we will notice only such points as are argued by him, and in the order they have been presented by him—remarking, however, that he raises a great many points not presented by us in our original brief, and which have no place in this case.

The first point raised by counsel is that the City of Jonesboro had power to issue bonds for corporate purposes under its charter, which proposition we admitted in our former brief, and only contend that this power did not extend to a subscription for and purchase of railroad stock. The authorities cited by counsel do not sustain him in saying that the city had power to so subscribe, but simply go to the extent of saying that they may do so under legislative sanction; that there must be a power given for that purpose before such subscription can be made, but when such power is so given it is then held to be for corporate purposes. Not an authority cited goes to the extent of saying such subscriptions may be made without such sanction. A power to borrow money for municipal purposes and issue bonds therefor never has been and can not be construed to be a power to subscribe to the capital stock of a railroad company. The power to borrow money for corporate purposes and issue bonds therefor does not form a part of this case. Not a dollar was borrowed or a single bond in suit issued for borrowed money, either for corporate or other purpose. The bonds do not purport to be for borrowed money, but say they are in payment of the purchase price of an article the city had no right to purchase. On examination of the authorities cited by counsel on this proposition, it will be found that in all of the cases a power to subscribe for stock or make donations existed either in the charter of the municipality or by act of the legislature in corporating the railroad company.

The charter of the City of Jonesboro contains no such power as is found in cases cited, and the power must exist elsewhere if at all. These powers usually appear in the charter of the railroad company or some amendment thereof, and to these acts the Appellee next refers in this case. In fact, both parties refer to them. These laws are "An act to incorporate the Cairo and St. Louis Railroad Company", in force February 16, 1865; and "An act entitled an act to amend an act entitled an act to incorporate the Cairo and St. Louis Railroad Company", in force April 15, 1869; referred to as act of March 2, 1869; both of said acts fully set out in the record as evidence.

The former or incorporation act is of very little importance in this suit; only so far as it shows that the Railroad company to whom these bonds were issued was incorporated by special act of the legislature, and contains no power to municipalities to subscribe to its stock. The act is, however, complete in itself.

The most important questions in this cause arise upon the construction of the act of the Legislature of the State of Illinois passed in 1869, purporting to be amendatory of the act of 1865, incorporating the Cairo and St. Louis Railroad Company. This is not only a private law, but is also a local law, it is found in the private laws as published. It is true the act of which this purports to be an amendment is declared by itself to be a public law; but that does not make it such so as to take it out of the operation of Sec. 23, Art. III., Constitution of 1848. That provision can not be defeated in that way by the legislature. But there is not anything in the act in question that is embraced in the title thereof. The Cairo and St. Louis Railroad Company is not mentioned anywhere in the act except by reference to the title. The entire purport of the bill seems to be not to amend an act to incorporate a railroad company, but to authorize cities, towns and counties along a railroad already incorporated to subscribe to its capital stock. The sections in this bill are numbered from 1 to 4 inclusive, and refer to nothing else except to subscriptions. It is in fact "An act to authorize the several towns, cities and counties through or near which the Cairo and St. Louis Railroad may pass to subscribe for and take stock in said company, and to legalize certain elections already held"; but with the wrong title. It may be contended that the granting of power to municipalities to subscribe to the capital stock of a railroad company may be done as a part of the charter, but when the charter is already granted without such power to the municipalities, and there is nothing in the proposed amendment necessarily connecting it with the former law, it can not be properly termed an amendment to that law. Here the legislature might grant to municipalities the right to subscribe to the capital stock of this or any other railroad company, whether organized under the general law by filing its articles of incorporation or by act of the legislature, and as this act in no way modifies, changes or amends the charter as it was originally granted, but simply effects the municipalities along the said road as it might do without the existence of the former act of which it purports to be an amendment, the purport of the bill as we think is not expressed in the title, and being both a private and local law, is unconstitutional for that reason.

The title of an act, like all other language, may embrace a great deal, or it may be very restrictive in its terms. If this act had a short title like this: "An act authorizing subscriptions to the Cairo and St. Louis Railroad Company"; or, "An act in reference to subscriptions to the Capital Stock of the Cairo and St. Louis Railroad Company", it would be broad enough to include the entire scope of this act, and then it would not be an unconstitutional act. But the object of this provision of the law is to compel legislators to give notice of the act they propose to have passed. But few persons have an interest in a railroad charter, but perhaps a great many in railroad subscriptions. It is easier to amend a railroad charter than to pass a law authorizing railroad subscriptions or legalize invalid elections—hence the legislation on this subject.

The authorities cited by counsel upon this point are not appllicable to this case. In *Unity* v. *Burrage*, the strongest authority cited there are long recitals connecting the laws referred to, and one law is actually amendatory of the other. The Township of Unity voted $14,000 in bonds after it had been authorized to do so by the legislature, and the point was raised as to whether the law might not be unconstitutional because it attempted to validate elections in reference to other bonds unconnected with the Unity Towship bonds, and in that case the question was not so much as to the force and effect of the law, but as to whether it should be specially pleaded. Our view of the declarations in a private or local law that it shall be considered a public law, effect only questions of pleading and evidence—that is, they need not be specially pleaded, and courts take judicial notice of them without further proof.

But we pass to the most important point connected with these bonds, and under it may be grouped nearly all the remaining points argued by counsel for Appellee—that is, admitting, for the sake of argument, that the amendatory or enabling act of March 3, 1869, is constitutional, what effect has it upon the bonds in question. It must certainly be apparent to any reasonable mind that the vote of the municipality in this case was not a substitute for and equivalent to a subscription.

That the vote of the people may or may not be equivalent to a subscription is a very plain proposition, and the authorities cited by Appellee carries out that idea; but in order to amount to a subscription it must be so provided in the act authorizing the vote. It the cases cited by Appellee, the laws under which the vote was taken provided that if a majority of the votes cast were in favor of subscription, then the subscription should be deemed made, etc.; but such is not the case with the law under discussion in this case.

It can not be contended in this case that the vote was the subscription because the subscription under the rulings of this court rests upon legislative grant, and not on the vote. The power to subscribe is conferred after the election is held, and is only a power and not compulsory. In fact, the next point following in Appellee's brief acknowledges and cites an authority to sustain him, that the act of 1869 as a curative act did not compel, but simply empowered, the City Council to issue these bonds. Then the vote was not a subscription, and a power resting upon legislative grant, swept away by Constitution of 1870, is all that he can claim.

On page 18 of his brief, counsel for Appellee says: The argument that the city was compelled by legislative power to issue these bonds is an absurdity, and that a defense based upon such a proposition is nonsense. In this argument he attributes to us a position we have never assumed, but we agree upon the point that if the law was constitutional, it only empowered the authorities to issue the bonds, but did not make it obligatory, and this power remained with the authorities until taken away by the Constitution of 1870. This is inconsistent with the theory of counsel that the vote was equivalent to a subscription, but it is the law nevertheless. And this power never having been exercised until after it had been withdrawn, the bonds are void.

Appellee's counsel, on page 20 of his brief, assumes that the curative act of March 3rd, 1869, was in force at the time of the passage of the ordinance of subscription and the issue of the bonds. The act can not stand as against the Constitution of 1870. The one authorizes subscriptions, and the other prohibits them; the one is a repeal of the other. The law of 1869 was repealed by the law of 1870 (the constitution), hence it could not be in force at time of the adoption of the ordinance of subscription, July 21, 1871, or of the issue or delivery of the bonds in 1874.

Counsel has also mistaken our position as to the force of the law of 1869. We do not contend, as he attributes to us, that this law could be of no force in validating the bonds, because they had not been issued, and were not issued until long after the repeal of the law of 1869. We are unable to understand why he persists in repeating that this law was in force at time of ordinance of subscription, and issue, delivery and registry of the bonds. He cites authorities to prove that the purchaser has a right to rely on all the laws in existence at the time of the issue of the bonds—which is a true proposition of law—but the bonds in this case bear date July 1, 1872, at which time there was no law in existence except the repealing act, the Constitution of 1870. Why argue a point that is admitted ?

Then this, being the only law in existence, is the only law that we have to look to at this date. We find, however, by reference to this law, that after its adoption no bonds can issue except where authorized by a vote of the people of the municipality, taken under existing laws. We then look back to the curative act of March 3, 1869, and find that there had been a vote to subscribe to the capital stock of this Railroad Company, and to issue bonds therefor, and that the same was irregular and void, and that the act attempts to cure it, we then conclude, under the rule laid down by this court in *St. Joe Township* v. *Rodgers*, that the power to issue bonds by the City rests alone on legislative grant, and not upon the vote of the people, and does not come within the saving clause of the constitutional provision.

County of Moultrie v. *Savings Bank*, 92 U. S., 633.

Counsel for Appellee in this case has in a number of instances mis-stated the facts as they appear from the evidence, or assumed that to be proven which he has not even attempted to prove.

In the first place, he asserts that the evidence shows Appellee to be *bona fide* holder of the bonds for value. In this he is mistaken—he only has the presumption of law. But he claims his client has sworn it. He has only done so in a petition to remove the case from the State to the Federal Court, and in his answer, where his answer under oath was waived in complainant's bill, and consequently can not amount to evidence, there is no evidence upon this point.

It is claimed also that the City has paid the interest by regular levy and collection of taxes for ten years. In this he is mistaken. These bonds, as shown by the evidence, were never delivered until October, 1874, and the first interest would be payable July, 1875, and the taxes of 1882 were enjoined; from 1875 to 1881, inclusive—seven years—and were levied by the Auditor of State, and collected by the Sheriff of the County, so that the officers of the Town have nothing to say, and the City nothing to do but pay. But under our theory that the bonds are issued without power, there can be no estoppel by payment of interest or otherwise.

Appellee says that the City of Jonesboro had formally subscribed upon the books of the Company for aught that appears upon this record, and hold the stock to-day; but such is not the condition of the record. The proof of subscription is the ordinance of July 21, 1871. There is no evidence of a subscription at any other time, but, on the contrary, the evidence of Mr. Grear, page 44 of record, shows that nothing was done prior to that time; but the Appellee's counsel refers to the certificate of stock tendered in this suit into court. Its date shows that it was not issued till October, 1874.

"The City has issued the bonds, and has paid taxes for *ten long years*, and consequently they should be held valid." We have shown that they have only paid taxes for seven years of about an average length of 365 days each, and that that could be no estoppel if the bonds are issued without authority. Again, he relies on certificates and affidavits of officers of the City to give validity to these bonds, which would be all very well if he had valid laws to support him, and we were trying to avoid the bonds on account of a failure of the Railroad company to comply with its part of the contract.

Then the order of the evidence is as follows:

1. The City of Jonesboro was incorporated in 1857, the charter containing no power to subscribe to the capital stock of a Railroad Company.

2. The Cairo and St. Louis Railroad Company was chartered by act of the legislature (private act) in 1865, without any authority as to municipal subscriptions.

3. The City took a vote as to whether it would subscribe to the stock of said Railroad Company, on the 6th day of April, 1868.

4. The Legislature attempted to authorize subscriptions and validate elections under color of amending the charter of said Company by private act of 1869.

5. The Constitution of 1870, in force on the second day

of July, took away all power of subscription except such as had been authorized under existing laws by a vote of the people prior to the adoption of the Constitution.

This saving clause did not extend to powers of subscription resting upon legislative grant.

6. A subscribing ordinance, July 21, 1871, more than one year after the adoption of the Constitution, and the only evidence of subscription.

7. The bond dated July 1, 1872, and delivered October, 1874.

8. Testimony of Sidney Grear, showing that no other subscription was made, etc.

The Appellee has no such testimony as he claims. He only relies on the bond and the laws above referred to. In fact, both parties rely on the same proof, and the only difference is upon the law of the case.

We present these points with a full conviction that they are sound, and that upon a proper examination of them by the Court, it will so appear to it.

Respectfully submitted,

W. S. DAY, *for Appellant.*